

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2054.

663

MARIA WATERS, APPELLANT,

vs.

MARGARET KOPP, ELIZABETH JEWELL, ALICE SMITH,
ANNIE MULLOY, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED AUGUST 13, 1909.

AND

No. 2055.

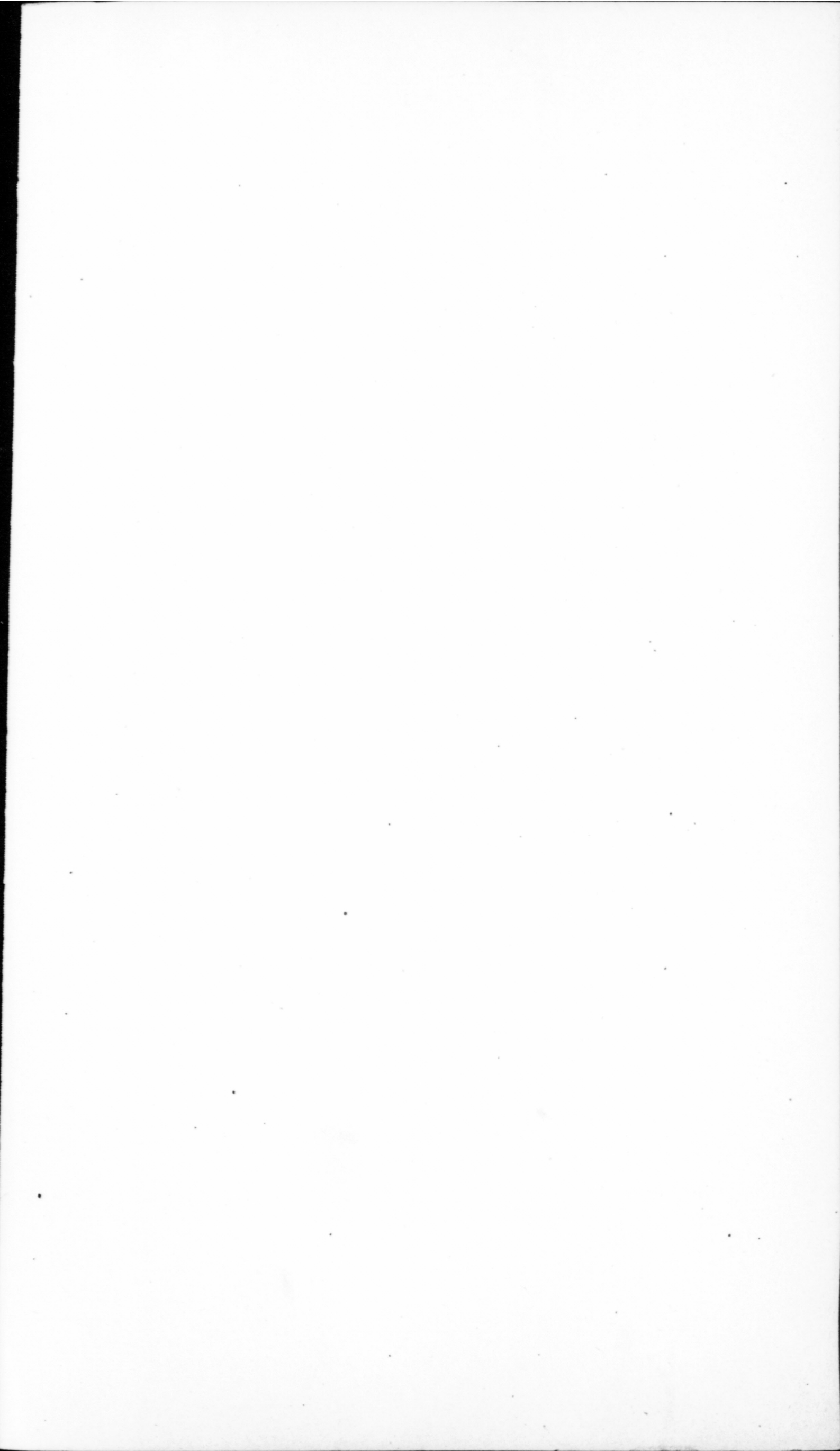
JOHN MITCHELL, JR., AS GUARDIAN *AD LITEM* OF
JOHN E. WATERS, FORMERLY JOHN E. SHEA, INFANT,
APPELLANT,

vs.

WILTON J. LAMBERT AND IRVING WILLIAMSON, COL-
LECTORS OF ESTATE OF JOHN SHEA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED AUGUST 16, 1909.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1909.

No. 2054.

MARIA WATERS, APPELLANT,

vs.

MARGARET KOPP, ELIZABETH JEWELL, ALICE SMITH,
ANNIE MULLOY, AND JOHN EDWARD SHEA, INFANT,
NOW JOHN EDWARD WATERS, AND WILTON J. LAM-
BERT AND IRVING WILLIAMSON, COLLECTORS, AP-
PELLEES.

AND

No. 2055.

JOHN MITCHELL, JR., AS GUARDIAN *AD LITEM* OF
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APPELLANT,

vs.

WILTON J. LAMBERT AND IRVING WILLIAMSON, COL-
LECTORS, APPELLEES.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 2054.

MARIA WATERS, Appellant,

vs.

MARGARET KOPP et al.

and

No. 2055.

JOHN MITCHELL, JR., as Guardian, &c., Appellant,

vs.

WILTON J. LAMBERT et al., Collectors of Estate of John Shea.

a Supreme Court of the District of Columbia.

Equity. No. 28147. Original Bill.

MARIA WATERS, Complainant,

vs.

MARGARET KOPP, ELIZABETH JEWELL, ALICE SMITH, ANNIE MULLOY, and John Edward Shea, Infant, now John Edward Waters, and Wilton J. Lambert and Irving Williamson, Collectors, Defendants.

Equity. No. 28147. Cross-Bill.

MARGARET KOPP and ANNIE MULLOY, Cross-complainants,

vs.

MARIA WATERS, ELIZABETH JEWELL, ALICE SMITH, JOHN EDWARD Shea, Infant, now John Edward Waters, and Wilton J. Lambert and Irving Williamson, Collectors, Cross-defendants.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to wit:

Bill.

Filed Nov. 10, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS, Complainant,

vs.

MARGARET KOPP, ELIZABETH JEWELL, ALICE SMITH, ANNIE MULLOY, and John Edward Shea, Infant, now John Edward Waters, and Wilton J. Lambert and Irving Williamson, Collectors, Defendants.

To the Supreme Court of the District of Columbia, holding an Equity Court for said District:

Complainant states as follows:

1. That she is a resident of the District of Columbia, is the wife of John O. Waters, and brings this suit in her own right, with relation to her sole and separate estate.

2. The defendants, Margaret Kopp, Elizabeth Jewell, Alice Smith, Annie Mulloy, and John Edward Shea, now John Edward Waters, are also residents of said District, and are sued in their own right. The defendants Wilton J. Lambert and Irving Williamson, are residents of said District, and are sued as Collectors of the estate of John Shea, deceased, under a decree of this court holding a probate court.

3. On December 5, 1881, there was delivered to John Shea, a certificate of membership No. 50,963, in the Safety Fund Department of the Hartford Life and Annuity Insurance Company of Hartford, Connecticut, bearing that date and by the terms of which, in consideration of certain payments to be made by the said Shea, said Company undertook to pay within ninety days from the receipt of satisfactory proof of the death of said John Shea, all the conditions of said certificate having been conformed to by him, the maximum indemnity of Ten thousand dollars less any balance due said Company, and said payment by the terms of said certificate was to be made "to his wife, Maria Shea, if living, otherwise to his legal representatives, upon presentation and surrender of his Certificate properly receipted."

4. Said Maria Shea departed this life, on or about the 7th day of May, 1900, leaving her husband, said John Shea, surviving, and from and after the death of said Maria Shea, complainant alleges the fact to be that said certificate or policy by its terms and as a matter of law became payable to any assignee of said John Shea under an assignment made by him in his life time, or in default of such assignment to his executors or administrators.

5. On December 21, 1906, said John Shea, by an assignment in writing, under his hand and seal, assigned and transferred unto

complainant, his daughter, all his right, title and interest in and to said policy of insurance, and said assignment was filed with said Company and officially consented to and recorded by it, subject to proof of validity of assignment and insurable interest, on January 15, 1907.

3 6. Said John Shea departed this life on July 12, 1908, and within the period of ninety days, complainant filed with said Complainant proof of death as required by said policy and demanded payment thereof, and proof being satisfactory said Company would have paid said sum to complainant under and by virtue of said assignment, but it was notified by the attorney for the defendant Margaret Kopp, as complainant is informed and believes, that she claimed an interest in said policy, and said Company thereupon withheld payment until it could be made without danger of its being involved in litigation or exposed to double liability.

7. Thereafter, on or about August 7, 1908, said Margaret Kopp filed a petition in this court holding a probate court, administration No. 15,443, alleging the death of said John Shea, giving the names of his next of kin, and averring that said policy was payable to the estate of said John Shea, and she prayed that she might be appointed administratrix thereof. A summons, based upon said petition having been served on complainant, she answered the same on or about the 18th day of August 1908, setting up the assignment of said policy to her, and denying that the amount payable thereunder was any part of the estate of said John Shea, and thereupon it being impossible to collect the amount of said policy from said Company in any other way, it was agreed to have the defendants Lambert and Williamson appointed Collectors in order that said fund might be realized and brought into this jurisdiction, and in accordance therewith by an order passed on the — day of August 1908, pending the settlement of the controversy with reference to the proceeds of said insurance policy, the parties last named were appointed such
4 Collectors, and they gave bond in the sum of \$15,000 as required and received letters. Said Company upon a receipt signed by complainant and her husband and said Collectors consented to pay said amount to the latter with the stipulation in said receipt that the rights of the respective parties were not to be prejudiced by the payment to said Collectors. There was the sum of \$177.50 balance due under said policy to said Company, and the remainder of said \$10,000, namely \$9,822.50, was received by said Collectors from said Company on October 21, 1908, and was on that date deposited by them in the National City Bank of said District, where it bears interest at the rate of two per cent. per annum.

8. The children of said John Shea, born of his marriage to said Maria Shea, are his daughters, your complainant, Elizabeth Jewell, Annie Mulloy and Alice Smith, all of whom are of full age, and he left a grand-son, the only child of a son Edward Shea, who died several years before said John Shea. Said grand-son is two years and four months old and was named John Edward Shea, but by proceedings in this court, he was adopted by complainant and her husband,

and is now their child and in their custody and his name is John Edward Waters. Said daughters Elizabeth Jewell and Alice Smith concede the right of complainant to said policy.

9. Complainant is advised that the probate court is without jurisdiction to hear and determine the questions arising with respect to the ownership of the proceeds of said policy, and that it is necessary to bring and file this proceeding in equity to establish said
5 assignment and to obtain a decree directing said Collectors to pay to the complainant the sum of \$9,822.50 so collected by them.

A copy of said policy, or so much thereof as is material, and of said assignment in full is herewith filed as a part of this bill, and all of said policy and said assignment has by stipulation with the attorney for some of the defendants been photographed, and will hereafter be exhibited to the court.

Wherefore, complainant prays as follows:

1. That a decree may be passed establishing said assignment, declaring that complainant is entitled to the proceeds thereof and directing said Collectors to pay the amount so received by them to her.

2. That a guardian ad litem may be appointed for said infant, John Edward Shea, now John Edward Waters.

3. That complainant may have such other and further relief as the nature of the case may require.

To which end complainant prays for process against the defendants Margaret Kopp, Elizabeth Jewell, Alice Smith, Annie Mulloy, John Edward Shea, now John Edward Waters, and Wilton J. Lambert and Irving Williamson, Collectors, requiring them to appear and answer the exigency of this bill.

MARIA WATERS.

IRVING WILLIAMSON,
Sol'r for Comp't.

6 DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the bill by me subscribed, and know the contents thereof, and that the facts therein stated, upon my personal knowledge, are true, and those therein stated upon information and belief, I believe to be true.

MARIA WATERS.

Subscribed and sworn to before me this 10th day of November, 1908.

[SEAL.]

J. ARTHUR LYNHAM,
Notary Public.

7 Certificate of Membership. Maximum Indemnity \$10,000.

No. 50963.

Safety Fund Department.

Age, 49.

The
Hartford Life and Annuity Ins. Co.
of Hartford, Connecticut.

In consideration of the representations, agreements, and warranties made to said Company in the application for which Certificate of Membership, Number 3881 in its Security Fund Division was heretofore issued, and of the Admission Fee paid in said Security Fund Division, and of the surrender of said Certificate of Membership, and for the transfer of all interest in the fund of said Security Fund Division to the fund of the Safety Fund Department, and of the sum of Ten Dollars, on each \$1,000 of the Maximum Indemnity herein provided for, to be paid to said Company as herein required, to create a Safety Fund as hereinafter described, or so much thereof as has not been paid heretofore in said Security Fund Division and transferred as hereinbefore mentioned, and of Three Dollars per annum on each \$1,000 for expense Dues, to be paid as hereinafter conditioned, and of the further payment of all Assessments proportioned to the Maximum Indemnity herein provided for levied against the herein named member to form a Mortuary Fund for the payment of all indemnity matured by deaths of members, which assessments, to be levied upon all the members in the department wherein this Certificate is issued whose Certificates are in force at the dates of such deaths, shall be made according to the table of graduated assessment ratios given hereon, and as further determined by their respective ages and the aggregate Maximum Indemnity at the dates of such deaths, with due allowance for discontinuance of membership, does hereby issue this Certificate of Membership in its Safety Fund Department to John Shea (herein called the member) of Washington, *County of — State of* District of Columbia, with the following agreements:

That the interest of the herein-named member in the aforesaid Security Fund Division, and in the fund thereof, shall not finally lapse and determine, nor shall this Certificate of Membership in the Safety Fund Department go into force until all certificates of membership in force in said Security Fund Division upon which payments have been made to the fund thereof have been surrendered to and canceled by the Trustee of said Security Fund, and a certificate of such surrender and cancellation delivered to said Company.

That ninety days from the receipt by the President or Secretary of said Company of satisfactory proofs, together with full information as to the manner and cause, of the death of the herein
8 named member while this Certificate is in force, all the conditions hereof having been conformed to by the member, there shall be due and payable, out of the aforesaid Mortuary Fund and not otherwise, the Maximum Indemnity of Ten Thousand Dollars (less the balance unpaid, if any, of the stipulated contribution to said Safety Fund, with fifty per cent. added, together with

any balance due said Company), to his wife, Maris Shea, if living, otherwise to his legal representatives, upon presentation and surrender of this Certificate properly receipted. All such payments to be made at the Home Office of said Company in lawful money of the United States.

That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to Three Hundred Thousand Dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said Department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to One Million Dollars, all subsequent receipts therefor shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time, after said Fund shall have amounted to Three Hundred Thousand Dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if justly and legally due, to pay the Maximum Indemnity provided for by the terms of any Certificate issued in said Department, and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund), among all the holders of Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list, under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused, for the period of sixty days from its date. And said Company further agrees that so long as any Certificate of Membership in its Safety Fund Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned.

And said Company further agrees that the aforesaid Mortuary Fund shall be in no wise chargeable or liable for any use or purpose

other than for the settlement of Death Claims, except as herein mentioned.

This Certificate is issued by the Company and accepted by the Member upon the express conditions and agreements given elsewhere hereon, and assented to as forming part of this contract.

In witness whereof, The said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and delivered this contract, at Hartford, Conn., this 5th day of December, one thousand eight hundred and eighty one.

F. R. FOSTER, *President*.

STEPHEN BALL, *Secretary*.

10 *Order Appointing Guardian Ad Litem for John Edward Shea, &c.*

Filed Nov. 30, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

It appearing to the Court that the defendant, John Edward Shea, now John Edward Waters, is an infant and has been duly served with subpœna by the Marshal, and is now present in open Court; that Maria Waters, the custodian of said infant, has likewise been served with subpœna, it is this 30th day of November, 1908, adjudged and ordered by the Court that John Mitchell be and he is hereby appointed guardian ad litem for said infant.

JOB BARNARD, *Justice*.

Answer of John Edward Shea, now John Edward Waters, by Guardian.

Filed Dec. 1, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

11 The answer of John Edward Shea, now John Edward Waters an infant under the age of twenty one years by John Mitchell, Jr., his guardian ad litem, to the bill of complaint of Maria Waters against him, in the above entitled cause, exhibited.

This defendant cannot admit any of the matters and things alleged in the said bill, and being an infant of tender years, submits his rights to the protection of this court.

JOHN MITCHELL, JR.,
Guardian Ad Litem.

DISTRICT OF COLUMBIA, ss:

On this 1st day of December, 1908, the above named John Mitchell, Jr., personally appeared before me, and made oath that the matters and things stated in the foregoing answer are true to the best of his knowledge and belief.

JOHN MITCHELL, JR.

Subscribed and sworn to before me.
[SEAL.]

ALFRED B. DENT,
Notary Public.

Joint and Several Answer of Margaret Kopp and Annie Mulloy.

Filed Jan. 5, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS, Complainant,
vs.
MARGARET KOPP et al., Defendants.

12 The joint and several answer of the defendants Margaret Kopp and Annie Mulloy to the Bill of Complaint filed in the above entitled cause, respectfully represents to the Court as follows:

These defendants now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's bill of complaint contained, and without waiving any rights that they may have to object to the jurisdiction of this Court over the subject matter in said bill, or object to the subject matter on the ground that the same alleges no equity therein, or to object upon the ground that said cause cannot be maintained, but reserving said question to be heard at the hearing the same as if they had demurred to said bill, for answer thereunto or unto so much and such parts thereof as these defendants are advised is and are material and necessary for them to make answer unto, these defendants, answering, saith:

1. The defendants Margaret Kopp and Annie Mulloy admit the allegations of the first paragraph of the Bill of Complaint.

2. The defendants Margaret Kopp and Annie Mulloy admit the allegations of the second paragraph of the Bill of Complaint.

3. Answering the third paragraph of the said bill these defendants say that they deny that on October 5, 1881, there was delivered to

John Shea a certificate of membership, etc., as set forth in said paragraph, if by the statement it is meant to be conveyed that the policy of insurance referred to was issued to and procured by the said John Shea upon his life. They aver the fact to be that said policy of insurance was taken out not by the said John
13 Shea, but by his wife, Maria Shea, who had a right so to do, insuring thereby at her own cost and expense the life of her husband, the said John Shea referred to. The other allegations in said paragraph relative to the conditions of the policy referred to, etc., they believe to be correctly stated, but for greater accuracy in connection therewith refer to the policy itself.

4. Answering the fourth paragraph of said bill these defendants say that it is true the said Maria Shea departed this life prior to the said John Shea, but they deny that from and after her death the certificate or policy referred to as matter of law became payable to any assignee of John Shea under any assignment made by him in his life time, or that the same became payable in case of no assignment to his executors or administrators, and while they say that the statements referred to are largely conclusions of law which they are not at this time required to answer, they aver that said policy did not become the property of John Shea in any way upon the death of Maria Shea, and was not susceptible of a legal assignment by him alone to anyone.

5. Answering the fifth paragraph of said bill these defendants say that they have no personal knowledge of the pretended assignment of December 21st, 1906, by which John Shea referred to therein, pretended to convey the interests in said policy to the complainant Maria Waters, or of the pretended acceptance of said assignment by the insurance company, and if the same be deemed material they demand strict proof thereof. Further answering said paragraph

these defendants deny that said John Shea, had he been
14 compos mentis or free from any undue influence, could have executed any valid assignment of said policy as referred to therein, and they aver that in addition to his not under any circumstances being able to execute a valid assignment of a policy at law, the said John Shea was not at the time mentioned mentally capable of executing any assignment, or of executing any valid deed or contract, and that if in fact he were mentally capable at said time, the pretended assignment referred to was utterly nugatory and invalid on account of having been procured, if at all, under the persuasion and fraud practiced upon the said John Shea by the said Maria Waters, or husband, John O. Waters, or both, with whom the said John Shea lived a considerable period of time prior to his death, and with whom he was living at the time said pretended assignment is said to have been made, and both of said parties were in confidential relationship with him.

6. Answering the sixth paragraph of said bill these defendants say that they have no knowledge concerning the statements that the complainant Maria Waters undertook to furnish the insurance company, but if the same be deemed material they demand strict proof. They admit that notice was given by their attorney of the claim

of defendants in the proceeds of said policy, and they believe that acting thereon said company did withhold payment.

7. Answering the seventh paragraph of said bill these defendants say that they believe the allegations contained therein are true.

15 8. Answering the eighth paragraph of said bill these defendants say they believe the statements contained therein as to the children born to John Shea and Maria Shea and as to those that are at present surviving, are true, although as to the adoption of said John Edward Shea, now called John Edward Waters, they have no knowledge, and if the same be deemed material, they demand strict proof thereof.

Further, answering said paragraph these defendants say that they believe it is true that Elizabeth Jewell and Alice Smith have in some way consented to the position taken by Maria Waters, the complainant in this cause, but they aver that such concessions by them, if the same be true, were not because of any feeling on their part that the said Maria Waters was in the right or that she was entitled to the entire proceeds of the said policy, or was in fact entitled to any preference over the heirs of Maria Shea to the avails of the policy referred to, but were brought about, if at all, by reason of compromise agreements and concessions made by the said Maria Waters with the said Elizabeth Jewell and Alice Smith, whereby the said defendants Alice Smith and Elizabeth Jewell were guaranteed or promised, or were made to understand, that they would receive certain benefits or portions of the proceeds in the event of the success of the said Maria Waters in maintaining her position, and these defendants aver that such undertaking or agreement or arrangement was made by the said Maria Waters with the intent and purpose of defeating the defendants of their just rights and of any portion of the

16 proceeds of the said insurance policy which was lawfully and justly due them.

9. Answering the ninth paragraph of said bill these defendants say that the allegations therein are simply statements of law which they are advised it is not necessary for them to answer.

Further answering said bill these defendants say that at the time of the taking out of the policy referred to in these proceedings the said John Shea was without any means whatsoever and was without any earning capacity, and that he was dependent entirely upon his wife, Maria Shea, who was comfortably well off financially, and was possessed of a number of pieces of real estate in the District of Columbia in addition to some personal property; that being entitled to take out insurance upon the life of her husband the said Maria Shea did determine so to do, and about the date mentioned actually secured the policy referred to upon the life of said John Shea, having the same made payable to her; that all during her life time the said Maria Shea kept up the payment of premiums or assessments on said policy so taken out for her benefit and that upon the death of said Maria Shea she left an estate consisting almost entirely of real property, comprising a number of houses and lots in the District of Columbia, which soon became the subject of partition proceedings between the heirs, the said John Shea having an interest to the extent of tenancy by courtesy in said real property; that said Maria

17 Shea died intestate, and the property referred to was partitioned through the medium of Equity Cause No. — in the Supreme Court of the District of Columbia, in connection with which proceedings Irving Williamson and Wilton J. Lambert were appointed trustees to sell said property, and did actually make sale thereof in due course of time; that subsequent to the death of the said Maria Shea, her heirs, being partners referred to in said partition suit, kept up jointly the premiums or assessments required to be paid on said insurance policy as they became due and payable; that after the sale of said real estate all of the parties in interest including the complainant Maria Waters, the same being the heirs at law and next of kin of Maria Shea, and the prospective heirs at law and next of kin of John Shea, deceased, joined into an agreement whereby the trustees Wilton J. Lambert and Irving Williamson were authorized and directed to deduct from the corpus of the fund derived from the sale of the said real estate, the sum of three hundred dollars (\$300) from the distributive share of each of said next of kin and heirs at law of Maria Shea and prospective heirs at law and next of kin of John Shea, for the purpose of holding and using the same as a fund for the payment of the quarterly assessments, due or to become due from time to time, the said assessments on the policy referred to varying in amount from quarter to quarter in accordance with the mortality records, and the requirements of the said insurance company to meet same, it being thought that the fund referred to would be sufficient to meet what might become due under said policy during the life time of the said John Shea, who at said time was considerably advanced in age; that said trustees reserved the fund referred to on the basis mentioned, and actually paid from

18 quarter to quarter the assessments or premiums on said policy, many of said payments having been made to the defendant Margaret Kopp for transmission to said company. They further say that in due course of time, many of the assessments having been unusually heavy, the trustees exhausted said fund, whereupon the defendant Margaret Kopp endeavored to reach some arrangement with the other parties in interest and especially with the said Maria Waters, who had obtained possession of said policy after the death of their mother, to the end, as they had been prior thereto, to pay their ratable proportion of the assessments or premiums as they might become due and payable, yet nevertheless she failed to secure any arrangement or co-operation of said Maria Waters to that end, although the same was endeavored to be effected through counsel, and the said complainant, not desiring to enter into any equitable arrangement along the lines mentioned, conceived the plan of attempting to secure for herself the entire avails of the said policy, and thereby perpetrate a fraud upon the rights of defendant and others interested therein, and she having the said John Shea in feeble health and of weak mentality confined in her house, began the carrying out of the plan which has been shown in these proceedings of attempting to secure for herself the entire fund; that as a first step in the direction of the consummation of the fraud referred to the said Maria Waters secured the execution of a paper writing *pertaining*

to be the will of the said John Shea, deceased, whereby out of the proceeds to be obtained from said insurance policy the sum of three hundred dollars (\$300) was left to each of the heirs at law and next of kin, and the balance to said Maria Waters, and later, conceiving the amounts mentioned were too large to be kept away from her, she conceived the plan of putting into effect the pretended assignment, by which she hopes to defraud the defendants of their interests in the policy referred to.

Further answering said bill the defendant Margaret Kopp says that she has endeavored to secure the equitable arrangement of continuing the payment of the premiums on the policy referred to after the exhaustion of the fund set aside in the hands of the said Irving Williamson and Wilton J. Lambert, trustees, and she offered to the said Maria Waters to pay her share of said premiums, and actually tendered a check to cover her share of one of the premiums or assessments due the same, which offer and tender were accepted and the said check cashed. That she has made similar tenders or offers to the said Maria Waters and her husband, who was acting on her behalf, but that they were refused. These defendants further say that the arrangement for the continuance of the payments of the premiums on the policy of the life of the said John Shea was fully known to him and acquiesced in by him, and that he had no intention whatsoever of continuing the said payments himself.

And having fully answered these defendants pray to be hence dismissed with their costs.

MARGARET KOPP.
ANNIE MULLOY.

WILTON J. LAMBERT,
RUDOLPH H. YEATMAN,
*Solicitors for Defendants Margaret
Kopp and Annie Mulloy.*

20 DISTRICT OF COLUMBIA, ss:

We, Margaret Kopp and Annie Mulloy, on oath say that we have read over the foregoing answer by us subscribed and know the contents thereof; that the matters and things therein stated of our personal knowledge are true, and those stated on information and belief we believe to be true.

MARGARET KOPP.
ANNIE MULLOY.

Subscribed and sworn to before me this 4th day of January, 1909.

[SEAL.]

WALTER S. T. BROWN,
Notary Public, D. C.

Joint Answer of Elizabeth Jewell and Alice Smith.

Filed Jan. 14, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

These defendants admit the relationship of the parties hereto to the late John Shea as set forth in the bill of complaint. They further admit that the insurance policy in the sum of ten thousand dollars, referred to in the bill, on the life of said John Shea, was by him assigned to the complainant, Maria Waters at the time and in the manner set forth in said bill, and that said Maria Waters is entitled to the proceeds thereof.

And having fully answered, &c.

Mrs. ELIZABETH JEWELL.
ALICE SMITH.

Jurat waived.

IRVING WILLIAMSON,
Sol'r for Comp't.

Replication.

Filed Jan. 14, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

The complainant hereby joins issue on the answers of the defendants.

IRVING WILLIAMSON,
Sol'r for Comp't.

Answer of Irving Williamson, Collector.

Filed Jan. 21, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS, Complainant,

vs.

MARGARET KOPP et al., Defendants.

22 The Separate Answer of Irving Williamson, one of the Above Named Defendants, as one of the Collectors of the Estate of John Shea, Deceased.

This defendant as such Collector answering so much of the Bill of Complaint as it is material he should answer in said capacity, says:

That the allegations of said bill respecting the appointment of Wilton J. Lambert and this defendant as Collectors, their qualification and the collection by them of the fund mentioned in the bill and its deposit in bank to their credit, are true.

Defendant believes that in his capacity as Collector it would be improper to answer any allegations of said bill not relating to the collectorship.

IRVING WILLIAMSON, *Collector*.

I do solemnly swear that I have read the foregoing answer, by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief, I believe to be true.

IRVING WILLIAMSON.*

Subscribed and sworn to before me this 21st day of January, 1909.

J. R. YOUNG, *Clk*,

By F. E. CUNNINGHAM, *Ass't Clk*.

23

Cross-Bill.

Filed Jan. 26, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 28147.

MARIA WATERS, Complainant,

vs.

MARGARET KOPP, ELIZABETH JEWELL, ALICE SMITH, ANNIE Mulloy, and John Edward Shea, Infant, now John Edward Waters, and Wilton J. Lambert and Irving Williamson, Collectors, Defendants.

Equity. No. 28147.

MARGARET KOPP and ANNIE MULLOY, Cross-complainants,

vs.

MARIA WATERS, ELIZABETH JEWELL, ALICE SMITH, JOHN EDWARD Shea, Infant, now John Edward Waters, and William J. Lambert and Irving Williamson, Collectors, Cross-defendants.

Come now Margaret Kopp and Annie Mulloy, defendants in the above-entitled cause, and filing this their joint and several cross-bill, state as follows:

First. Heretofore, to wit, on the 10th day of November, A. D. 1908, the complainant, Maria Waters, filed in the above entitled cause her bill of complaint against the cross-complainants, and the other defendants, wherein and whereby it was alleged that on December 5, 1881, there was delivered to John Shea

24

a certificate of membership in the Safety Fund Department of the Hartford Life and Annuity Insurance Company of Hartford, Connecticut, by the terms of which said company undertook to pay, upon the death of the said Shea, the maximum indemnity of ten thousand dollars "to his wife, Maria Shea, if living, otherwise to his legal representatives, upon presentation and surrender of this certificate properly receipted." That Maria Shea died on or about the 7th day of May, A. D. 1900, some time before her husband, John Shea, and that on December 21, 1906, John Shea, by a written assignment, transferred to the complainant, his daughter, all his right, title and interest in and to said policy of insurance, the assignment having been filed with the Insurance Company and consented to by it on January 15, 1907. That John Shea died on July 12, 1908 and proper proofs of his death were furnished the company, but that the company held up the payment to complainant because it had been notified that the cross-complainant, Margaret Kopp, claimed an interest in the proceeds. That administration proceedings were instituted by Margaret Kopp and in those proceedings the cross-defendants, Williamson and Lambert, were appointed collectors, and received the sum of nine thousand eight hundred twenty-two dollars and fifty cents from the Insurance Company to hold pending an adjudication as to who is entitled thereto. It was further alleged that

25 the children of said John Shea are the complainant and all of the defendants except the said Williamson and Lambert, and John Edward Shea, the latter being a son and only heir of a deceased son, Edward Shea. Complainant then prays that a decree be passed establishing the assignment to her, and declaring that she is entitled to the proceeds thereof, and directing the collectors to pay the same to her.

Second. These cross-complainants on, to wit, the 5th day of January, A. D. 1909, filed their joint and several answer to the said bill of complaint, wherein and whereby they denied that the said John Shea had any interest in said certificate of membership which he could assign to complainant, and wherein they allege, as a matter of law, that said policy of insurance was not susceptible of a legal assignment by him alone; and wherein they further alleged that the said John Shea, at the time of the making of said alleged assignment, was not mentally capable of executing any assignment, or of executing any valid deed or contract, and that if in fact he were mentally capable at said time, the pretended assignment was procured by persuasion and fraud practiced upon him by the said Maria Waters, or her husband, John O. Waters, or both; and wherein they deny that the said Maria Waters has any right, title or exclusive interest in the proceeds of said policy on the life of the said John Shea; and wherein it is further alleged that the proceeds of said certificate, by its terms, are payable to the children of John Shea and Maria Waters.

Third. The said bill of complaint and the said answer are hereby referred to as are also any other pleadings and proceedings herein, and made part hereof as though the same were herein at large set forth.

26 Fourth. This Honorable court appointed a guardian ad litem of the infant defendant, John Edward Shea, who appeared and answered, submitting the interests of said infant to this court for determination.

And these cross-complainants, by way of cross-bill, state as follows:

1. They are citizens of the United States and residents of the city of Washington, District of Columbia, and file this cross-bill in their own right, as hereinafter set forth.

2. The cross-defendants, Maria Waters, Elizabeth Jewell, Alice Smith, John Edward Shea, are sued in their own right as hereinafter set forth; and the cross-defendants, Wilton J. Lambert and Irving Williamson, are sued as collectors as hereinafter set forth. All of the cross-defendants are citizens of the United States and residents of the District of Columbia.

3. That on December 5, 1881, Maria Shea, wife of John Shea, having an insurable interest in the life of John Shea by reason of her relationship, secured a policy of insurance on his life from the Hartford Life and Annuity Insurance Company of Hartford, Connecticut, in the form of a certificate of membership, numbered 50963, in the Safety Fund Department of said Company, bearing that date; that by the terms of said policy, in consideration of certain payments to be made said Company undertook to pay, within ninety days from the receipt of satisfactory proof of the death of John Shea, all the conditions of said certificate having been conformed to by him, the maximum indemnity of ten thousand dollars, less
27 any balance due the Company, said payment to be made "to his wife, Maria Shea, if living, otherwise to his legal representatives, upon presentation and surrender of this certificate properly receipted." That at said time John Shea was without any means whatsoever, and was without any earning capacity and entirely dependent upon his wife, Maria Shea, who was comfortably well off financially, and was possessed of a number of pieces of real estate in the District of Columbia, in addition to some personal property; and that all during her life Maria Shea paid the premiums and assessments on said policy.

4. That when said insurance was procured by Maria Shea, it was her intention to provide for the payment of the indemnity to herself should she be alive, and in case of her death to her children; and for the purpose of effecting said intention used the words "legal representatives" as they appear therein; and that it was not the intention of said Maria Shea, nor did she by procuring the policy mentioned, confer any rights upon the said John Shea, that could be assigned by him; and in this connection they point out to the court that nowhere does it appear in said certificate that it is made with John Shea and his assigns, or payable to John Shea or his assigns. That the cross-defendant, Maria Waters, as well as all of the other children, so understood and interpreted the said certificate, and since the death of Maria Shea have acted on that interpretation and are thereby estopped to deny that interpretation, as will more fully appear hereinafter.

5. That upon the death of Maria Shea as aforesaid, on the 7th

28 day of May, 1900, she left an estate consisting almost entirely of real property, comprising a number of houses and lots in the District of Columbia, which became the subject of partition proceedings between the heirs, the parties to this cause excepting the collectors, John Shea having a legal estate by c-urtesy in said property; that Maria Shea died intestate, and the real estate referred to was partitioned by this court in equity cause No. 23513; that the collectors named herein were appointed trustees to sell and did actually make sale thereof in due course of time. That subsequent to the death of Maria Shea, her children, the parties hereto being her heirs and next of kin, jointly paid the premiums and assessments on the hereinbefore mentioned insurance, as they became due and payable; that after the sale of the said real estate all of the parties in interest, including the complainant, the cross-defendant herein, Maria Waters, the same being the heirs at law and next of kin of Maria Shea, and the prospective heirs at law and next of kin of John Shea, deceased, joined into an agreement whereby the trustees, Wilton J. Lambert and Irving Williamson, were authorized and directed to deduct from the corpus of the fund derived from the sale of the said real estate, the sum of three hundred dollars (\$300) from the distributive share of each of said next of kin and heirs at law of Maria Shea and prospective heirs at law and next of kin of John Shea, for the purpose of holding and using the same as a fund for the payment of the quarterly assessments, due or to become due from time to time, the said assessment on the policy referred to varying in amount from quarter to quarter in accordance with the mortality records, and the requirements of the said insurance company to meet same, it being thought that the fund referred to would be sufficient to meet what might become due under said policy during the life time of the said John Shea, who at said time was considerably advanced in age; that said trustees reserved the fund referred to on the basis mentioned, and actually paid from quarter to quarter the assessments or premiums on said policy, many of said payments having been made to Margaret Kopp for transmission to said company. They further say that in due course of time, many of the assessments having been unusually heavy, the trustees exhausted said fund, whereupon this cross-complainant, Margaret Kopp, endeavored to reach some arrangement with the other parties in interest and especially with the said Maria Waters, who had obtained possession of said policy after the death of their mother, to the end, as had been prior thereto, to pay their ratable proportion of the assessments or premiums as they might become due and payable; yet nevertheless she failed to secure any arrangement or cooperation of said Maria Waters to that end, although the same was endeavored to be effected through counsel.

6. That the said Maria Waters, not desiring to enter into any equitable arrangement along the lines mentioned, conceived the plan of attempting to secure for herself the entire avails of the said policy, and thereby perpetrate a fraud upon the rights of these cross-complainants and others interested therein and she having the said John Shea in feeble health and of weak men-

tality confined in her house, began the carrying out of the plan which has been heretofore shown, or attempting to secure for herself the entire fund; that as a first step in the direction of the consummation of the fraud referred to the said Maria Waters secured the execution of a paper writing purporting to be the will of the said John Shea, deceased, whereby out of the proceeds to be obtained from said insurance policy the sum of three hundred dollars (\$300) was left to each of the heirs at law and next of kin, and the balance to said Maria Waters, and later, conceiving the amounts mentioned were too large to be kept away from her she conceived the plan of putting into effect the pretended assignment, by which she hopes to defraud these cross complainants of their interests in the policy referred to.

7. That this cross-complainant, Margaret Kopp, has endeavored to secure the equitable arrangement of continuing the payment of the premiums on the policy referred to after the exhaustion of the fund set aside in the hands of the said Irving Williamson and Wilton J. Lambert, trustees, and she offered to the said Maria Waters to pay her share of said premiums and actually tendered a check to cover her share of one of the premiums or assessments due, which offer and tender were accepted and the said check cashed. That she has made similar tenders or offers to the said Maria Waters and her husband, who was acting on her behalf, but that they were refused. That the arrangement for the continuance of the payments of the premiums on the policy of the life of the said John Shea
31 hereinbefore mentioned, was fully known to John Shea and acquiesced in by him, and that he had no intention whatsoever of continuing the said payments himself.

8. These cross-complainants further allege on information and belief that at the time of the execution of the said alleged assignment in favor of Maria Waters, John Shea was mentally deficient and incapable of executing a valid deed or contract; that were he compos mentis that the said alleged assignment was procured by undue influence exercised upon his will by Maria Waters or her husband, or both, and further by fraud and persuasion improperly practiced upon him by Maria Waters, or John O. Waters, her husband, or both; and for these reasons the said alleged assignment is invalid and of no effect.

Wherefore, the premises considered, these cross-complainants pray:

I. That process may issue to the cross-defendants commanding them to appear and answer the exigencies hereof.

II. That this Honorable Court may by proper decree, adjudge and order that the alleged assignment of the said certificate of membership on the life of John Shea is null and void and of no effect.

III. That this Honorable Court may by proper decree adjudge and order that the proceeds of the said policy are due and payable to these cross-complainants and the cross-defendants, excepting the said Williamson and Lambert.

IV. That for the purpose of ascertaining the interests of the parties hereto in the proceeds of the said policy or certificate of
32 membership, this cause be referred to the Auditor of this Court; and that a decree be passed herein directing the col-

lectors to pay the said proceeds to the parties hereto as their interests may appear.

V. And for such other and further relief as the nature of this cross complaint may require.

MRS. MARGARET KOPP,
MRS. ANNIE MULLOY,
Cross-Complainants.

WILTON J. LAMBERT,
RUDOLPH H. YEATMAN,
Solicitors for Cross-Complainants.

DISTRICT OF COLUMBIA, ss:

Margaret Kopp and Annie Mulloy, being first duly sworn, on oath depose and say that they have read over the foregoing cross bill by them subscribed and know the contents thereof; that the statements therein made of their own knowledge are true, and those stated on information and belief they believe to be true.

MRS. MARGARET KOPP.
MRS. ANNIE MULLOY.

Subscribed and sworn to before me this 22nd day of January,
A. D. 1909.

[SEAL.]

WALTER S. T. BROWN,
Notary Public, D. C.

(Endorsed:) Let this cross bill be filed. Job Barnard, Justice.

33 *Separate Answer of Maria Waters to Cross-Bill.*

Filed Jan. 29, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS, Complainant,

vs.

MARGARET KOPP et al.

Equity. No. 28147.

MARGARET KOPP and ANNIE MULLOY, Cross-Complainants,

vs.

MARIA WATERS et al.

1. The filing of the original bill by this cross-defendant against said Margaret Kopp, Annie Mulloy and others, is admitted, but this cross-defendant cannot admit that the contents of said bill are correctly set forth in the first paragraph of said cross-bill, and for certainty she refers to said original bill and makes the same a part of this her answer.

2. It is true that said Margaret Kopp and Annie Mulloy filed their answer to said original bill, and for the contents of said answer reference is made to the same, but this cross-defendant denies the allegations of said answer, as hereinafter set forth, the same being substantially repeated in said cross-bill.

3, 4. The infant defendant was duly served, a guardian ad litem appointed for him and an answer filed. The defendants
34 Elizabeth Jewell and Alice Smith also answered as did Irving Williamson as Collector. Replication was filed and testimony was taken in behalf of complainant on January 22nd, 1909.

Answering the paragraphs of said cross-bill, this cross-defendant says:

1, 2. The allegations of the first and second paragraphs of said cross-bill are admitted.

3. It is true that on December 5, 1881, a policy of insurance on the life of John Shea was issued by the Insurance Company referred to in the third paragraph of said cross-bill, that it was numbered 50963 and was for the maximum indemnity of ten thousand dollars, less any balance due said Company, and that upon the death of said John Shea payment was to be made, as expressed in said policy, "to his wife, Maria Shea, if living, otherwise to his legal representatives, upon presentation and surrender of this certificate properly receipted," and while it is also true that Maria Shea, wife of John Shea had an insurable interest in his life, by reason of her relationship, this defendant denies that she secured said policy, or that at the date thereof said John Shea was without any means or earning capacity and entirely dependent upon his said wife. On the contrary this cross-defendant avers the fact to be that said John Shea was at said date and long afterwards a man of means, the owner of considerable and valuable real estate and conducting a profitable business, and the fact is that while the premiums and assessments on said policy may have been transmitted by his wife to said Company, the funds used by her in paying the same were derived from and were the property of said John Shea.

35 4. This cross-defendant denies that either said Maria Shea or her husband John Shea had any intention with respect to the payment of the indemnity provided for by said policy except that stated and set forth in said policy, and she especially denies that said Maria Shea used, caused to be used or chose the words "legal representatives" appearing in said policy, for the fact is that said words appear in said policy in print. Further this cross-defendant avers, as she is advised, that as a matter of law any intention of either Maria Shea or her husband is manifested and controlled by the terms of said policy, and that any supposed intention of either of them cannot change or affect said policy in any manner. Further answering this cross-defendant says: that all of the six children of said John and Maria Shea were born prior to December 5, 1881, and if it had been the intention of said husband and wife to make any change in the form of said policy or the legal effect thereof, it would have been competent and easy to have made the proceeds of said policy payable to Maria Shea if living, otherwise to

the children of said parties, and their names could have been given. Further answering this cross-defendant says that under the terms of said policy and the law applicable thereto said Maria Shea having died before her husband, said policy, prior to the assignment thereof was payable to the estate of said John Shea, and that after the assignment, as hereinafter referred to, which assignment said John Shea had a legal right to make, it became and was payable to this cross-defendant. This defendant denies that there was any interpretation put upon said policy by her or the other children of said John Shea which in any manner estops this defendant to assert her rights under her assignment, and while she and the other children believed that in the absence of any assignment by said John Shea, the amount realized on the policy would be distributed to them according to their respective rights growing out of advances on account of the premiums, none of them ever questioned the right of said John Shea to dispose of said policy as he might think fit.

5. Said Maria Shea at the time of her death, intestate, on May 7, 1900, was the owner of record of considerable real estate, but it was all derived by her by conveyance from her husband who prior thereto was the absolute owner of said real estate and said Maria Shea had no other interest therein except an inchoate right of dower. Proceedings for the partition of said real estate were had, and it was decreed to be sold in equity cause No. 23,513 in this court, and it is true that a fund of \$1800, part of the proceeds of sale, was set apart and left in the hands of the trustees appointed by the decree in said cause, to pay assessments on said policy, but the amount so reserved was not based upon any calculation as to the period of the probable life of said John Shea, but it was fixed because of the fact that his children were unwilling to create a larger fund. After the sum named was extinguished by payments on the policy, according to the present recollection of this defendant, one, two and perhaps three payments were made by this defendant, Elizabeth Jewell and Margaret Kopp, the other children declining to put up any more money. Sometime in the month of November, 1906, notice of an assessment of \$135.50, which was payable about December 6, 1906, was received from the insurance company, and said Margaret Kopp absolutely declined to make any further contribution, as did Elizabeth Jewell, who stated that she had been advised not to do so by said Kopp. This cross-defendant knew that if said assessment was not paid said policy would lapse, that all payments previously made thereon would go for nothing and that the payment guaranteed thereby on the death of said John Shea could not be enforced. In this emergency she caused and procured the payment of said assessment without any contribution from any of the other children of said John Shea and thus saved the same for the time being. Thereafter said Kopp reiterated her declination to make further payments, as did Elizabeth Jewell, and the other children had made no contribution since the exhaustion of the fund aforesaid. The stand taken by his children was known to said John Shea and he was also aware that this cross-defendant had caused said last mentioned assessment to be paid, and he declared that he would make a will, and —

short time thereafter he delivered to her a sealed envelope which he said contained his will, but a few days later he said to her that it would be a shame to lose the proceeds of said policy and that if she would agree to pay or cause to be paid the future assessments he would assign said policy to her as he knew that but for action on her part nothing could ever be realized therefrom, and upon her undertaking to see said future assessments paid the assignment referred to in the original bill was duly executed by said John Shea
38 on the 21st day of December, 1906, and in due course was transmitted to the company, recorded on its books, and by one of its Officers attached to said policy. Said assignment was the free and voluntary act of John Shea, made at a time when he was in good physical condition and of perfectly sound mind; and this defendant avers that he had a perfect right to make the same as a matter of law.

This defendant further says that said Margaret Kopp, after a few payments referred to in the preceding part of this paragraph of this answer, so far from endeavoring to reach an arrangement with the other children, or with this defendant, looking to future joint payments, absolutely declined to make any further contribution, and advised said Jewell to take the same position. It is untrue that this defendant obtained possession of said policy after the death of her mother in any improper manner, and the fact is that it remained in the house as it had during the life of her said mother.

6. It is untrue that this defendant was not desirous to enter into an arrangement for joint payment of said assessments, and the fact is that she repeatedly sought to induce the other children, and especially said Margaret Kopp to keep up their payments, and she had no wish to undertake the responsibility of paying, or procuring the payment thereof, during the remaining life of her father, and it was only when the emergency arose with respect to the December 1906 payment that she understood that it rested with her either to let the policy go or pay the assessment herself. As
39 already stated the idea of said assignment was that of said John Shea and was not proposed or suggested by her. He was at the time living with complainant, but it is absolutely untrue that he was confined in her house, for he went and came according to his pleasure without the slightest question or restraint, and the making of the assignment was not brought about by any persuasion, fraud or influence on her part. She had nothing to do with the making of his will, and believes that his final action in making said assignment, after the execution of said will, was the result of the knowledge on his part of the attitude taken by his other children in declining further payments thus invalidating the policy so far as their action was concerned, of his affection towards her and in pursuance of her undertaking to have all future assessments paid and thus preserve the policy, and the fact is that execution of both of said papers was not brought about by any word or act on her part, or on the part of anyone in her interest. All the allegations of said sixth paragraph are denied.

7. Said Margaret Kopp never subsequent to the few payments made as aforesaid after the exhaustion of said fund, offered to this

defendant to pay her share of said December 1906 assessment, or of any subsequent assessments, and never tendered any part of the same in money or by check. She was paid no part of the following assessments which this defendant paid, or caused to be paid, to the company, nor did she offer to pay any part of the same, and as no offer was made there could be and was no refusal.

40	1906, December 5.....	\$135.50
	1907, March 1.....	141.50
	1907, June 1.....	149.50
	1907, September 5.....	129.00
	1907, December 3.....	127.50
	1908, March 5.....	129.50
	" June 4.....	159.50

Said payments aggregate the sum of \$972, and were made or procured to be made by this defendant, except the first on the faith of, and in consequence of said assignment, without contribution, or offer of contribution, by said Kopp or any other of the children of said John Shea, and but for said payments made with considerable difficulty, said policy would have been absolutely lost. It is true that said John Shea did not intend to make payments himself, but so far from acquiescing in any plan subsequent to December 14, 1906, by which the proceeds of the policy should go equally to his children, in consequence of the attitude of all of them, except this defendant, in reference thereto, he took the action hereinbefore referred to as he had a right to do.

8. This defendant again denies that said John Shea was mentally deficient and incapable of executing a valid deed or contract at the time of executing said assignment, or that the same was procured by undue influence, fraud or persuasion practised upon him by this defendant or her husband, or any other person, and she again states that he proposed the execution thereof, himself
 41 directed the steps necessary in the making thereof and executed the same freely and voluntarily.

And having fully answered, &c.

MARIA WATERS.

IRVING WILLIAMSON,
Sol'r for Cross-Defendant.

DISTRICT OF COLUMBIA, ss:

I, Maria Waters, do solemnly swear that I have heard read the foregoing answer, by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief, I believe to be true.

MARIA WATERS.

Subscribed and sworn to before me this 26th day of January, 1909.

[SEAL.]

THOMAS P. BROWN,
Notary Public, D. C.

Joint Answer of Elizabeth Jewell and Alice Smith to Cross Bill.

Filed Jan. 29, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS, Complainant,

vs.

MARGARET KOPP et al.

Equity. No. 28147.

MARGARET KOPP and ANNIE MULLOY, Cross Complainants,

vs.

MARIA WATERS et al.

42 The Joint Answer of the Cross-defendants Elizabeth Jewell
and Alice Smith to the Cross-bill Filed by Margaret Kopp
and Annie Mulloy.

These cross-defendants admit the filing of the original bill in this cause and that answers thereto were filed, but as to the contents of said papers, they refer to the same as filed in this cause.

1 to 3. Answering said cross-bill, or so much thereof as they are advised it is material for them to answer, these cross-defendants admit the residence of the parties hereto, the capacity in which they sue and are sued and the issuance of the policy of insurance on the life of their father John Shea, but they deny that at the date of said policy, said John Shea was without means of earning capacity and entirely dependent upon his wife, and say that their father was the owner of much and valuable real estate and engaged in a business which yielded considerable profit, and they aver that the premiums on said policy were paid with his money.

4. These cross-defendants deny that there was any intention on the part of their father and mother with respect to said policy for the payment of the proceeds thereof except as shown on the face thereof, and they deny that the children of said John Shea have acted in any way which would work an estoppel with respect to the right of said John Shea to dispose of said policy, during his life time, as he might think proper

43 5. Prior to the death of their mother, Maria Shea, their said
father had caused real estate belonging to him to be vested
of record in his said wife, and after her death a partition proceeding was filed in this court under which said real estate was sold and from the proceeds a fund of \$1800 was set apart in the hands of the Trustees in said cause to be applied from time to time in the payment of premiums on said policy, but said fund was not created upon the basis of any belief that it would carry said policy through the life of their said father, but it was all that the parties

at that time were willing to contribute, and when it was exhausted, as cross-defendants now remember, several payments were made by Maria Waters, Elizabeth Jewell and Margaret Kopp, the others refusing to contribute, but when a payment became due, amounting to \$135.50, early in December 1906, the defendant Elizabeth Jewell answering separately says that the cross-complainant Margaret Kopp said to her that she, said Kopp, would pay no more money on account of said premiums, and had been advised that she would upon the death of said Shea receive just as much as though she continued her payments, and she advised said Jewell not to pay anything more, and thereupon all of the children of said John Shea, except Maria Waters, declined to make any further payment, and these cross-defendants aver upon information and belief, that since said December 1906 seven payments of premiums or assessments on said policy, amounting to more than \$900, were made by *on* in behalf of said Maria Waters without any aid or contribution from any

44 of the other children of said John Shea, and these cross-defendants deny that there was ever any endeavor on the part of said Margaret Kopp so far as they are concerned to reach an arrangement looking to the payment of any part of the assessments so paid by or in behalf of said Maria Waters.

6. These cross-defendants deny that there was any fraud or improper conduct on the part of said Maria Waters, or that she confined said John Shea in her house, or that she had or exercised over him any improper influence, or any influence which did or could induce the said John Shea to take any step with respect to said policy except such as might be the product of his free will, and they aver that the will and assignment referred to in this paragraph were executed by said John Shea voluntarily, and that so far from being in feeble health or of weak mentality, at the time they were so executed that he was in good physical and mental condition and of perfectly sound mind. These cross-defendants aver that said Maria Waters sought to induce the children of said John Shea to keep up said assessments by joint contribution, and it was only when they positively refused so to do that said Maria Waters paid or procured the same to be liquidated.

7. These cross-defendants deny that said Margaret Kopp endeavored to have the payment of said assessments continued, she made no offer or tenders to them, but took the position set forth in the fifth paragraph of this answer, and they have no knowledge of any tender to said Maria Waters. They believe that it is true that said John Shea had no intention of paying said premiums himself, and they aver the fact to be that he was aware of the refusal
45 of all of his children except said Maria Waters to continue said payments.

8. These cross-defendants again deny that at the date of the assignment of said policy by said John Shea to Maria Waters his mental faculties were in any way deficient or impaired, on the contrary he was of sound mind and in every way capable of executing a valid contract. It is untrue that said assignment was procured by Walters fraud or undue influence exercised upon him by said Maria

Waters, or her husband or any other persons, and they aver that said assignment is in all respects valid and binding.

And having fully answered, &c.

ELIZABETH JEWELL.
ALICE SMITH.

DISTRICT OF COLUMBIA, ss:

We, Elizabeth Jewell and Alice Smith do solemnly swear that we have read the foregoing answer by us subscribed, and know the contents thereof, and that the facts therein stated, upon our personal knowledge are true, and those therein stated upon information and belief, we believe to be true.

ELIZABETH JEWELL.
ALICE SMITH.

Subscribed and sworn to before me this 26 day of January, 1909.

[SEAL.]

THOMAS P. BROWN,
Notary Public, D. C.

46 *Order Appointing Guardian Ad Litem for Infant John Edward Shea to Cross-bill.*

Filed Jan. 29, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS, Complainant,
vs.
MARGARET KOPP et al.

Equity. No. 28147.

MARGARET KOPP and ANNIE MULLOY, Cross-Complainants,
vs.
MARIA WATERS et al.

It appearing to the court that the infant defendant to the cross-bill, John Edward Shea has been duly served with subpoena by the Marshal and is now present in open court, it is this 29th day of January, 1909, adjudged and ordered by the court that John Mitchell, Jr., be and he is hereby appointed guardian ad litem for said infant.

JOB BARNARD, *Justice.*

47 *Answer of Irving Williamson, Collector, to Cross-bill.*

Filed Jan. 29, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS, Complainant,

vs.

MARGARET KOPP et al.

Equity. No. 28147.

MARGARET KOPP and ANNIE MULLOY, Cross-Complainants,

vs.

MARIA WATERS et al.

This defendant admits the filing of the original bill in this cause, of certain answers thereto, and for the contents of said respective papers refers to the same as they appear of record.

Answering so much of said cross-bill as this defendant is advised, it is material and proper for him to answer, he says that he admits the appointment of Wilton J. Lambert and himself as Collectors, their qualification and the receipt by them of the fund referred to in the original bill in this cause.

This defendant does not believe it proper to answer fully the allegations of said cross-bill, he being a party only as such Collector, but not desiring to be placed in the attitude of admitting the truth of said allegations, he avers that the assignment of the policy referred to in the cross-bill was duly executed by John Shea,
48 and that at the time thereof said assignor was of sound mind and in every way capable of executing a valid deed or contract.

Upon information and belief, this defendant denies that said assignment was procured by the fraud or undue influence of Maria Waters or her husband, or of any other persons, and he believes the fact to be that the same was freely and voluntarily executed by said Shea.

And having fully answered, &c.

IRVING WILLIAMSON, *Collector.*

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the foregoing answer by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief, I believe to be true.

IRVING WILLIAMSON.

Subscribed and sworn to before me this 29th day of January,
1909.

J. R. YOUNG, *Cl'k.*,
By F. E. CUNNINGHAM, *Ass't Cl'k.*

49 *Answer of Infant Defendant by Guardian Ad Litem.*

Filed Feb. 1, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS, Complainant,

vs.

MARGARET KOPP et al.

Equity. No. 28147.

MARGARET KOPP and ANNIE MULLOY, Cross-Complainants,

vs.

MARIA WATERS et al.

This defendant cannot admit any of the matters and things alleged in the said cross-bill, and being an infant of tender years submits his rights to the protection of this court.

JOHN MITCHELL, JR.,
Guardian ad Litem.

DISTRICT OF COLUMBIA, ss:

Personally appeared before me the above named John Mitchell, Jr., and made oath that the matters and things stated in the foregoing answer are true to the best of his knowledge and belief.

JOHN MITCHELL, JR.

Subscribed and sworn to before me this 29th day of ———, 1909.

[SEAL.]

GEO. C. HENNING,
Notary Public.

50 *Notice as to Taking of Deposition of Thomas F. Lawrence.*

Filed Apr. 26, 1909.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

Equity. No. 28147.

MARGARET KOPP et al.

vs.

MARIA WATERS et al.

Irving Williamson, Esq., Attorney for Complainants and defendants
on cross bill in above entitled cause:

Please take notice that in the above entitled cause I shall, on behalf of the complainants to cross-bill and defendants to original bill,

take or cause to be taken the deposition *de bene esse* of Thomas F. Lawrence, Secretary of the Hartford Life Insurance Company, of Hartford, Connecticut, whose residence is 370 Laurel Street, Hartford, Connecticut, on Saturday, the Seventeenth day of April, 1909, at ten thirty o'clock a. m., at the office of said Thomas F. Lawrence, in the Hartford Life Insurance Company's Office, No. 252 Asylum Street, before Charles A. Safford, a Notary Public in and for
 51 the County of Hartford, State of Connecticut.

The reason for the taking of the testimony *de bene esse* of said witness is that he lives beyond the District of Columbia, and, to wit, in the City of Hartford, State of Connecticut.

WILTON J. LAMBERT,
*Attorney for Defendants to Original
 Bill and Complainants on Cross Bill.*

Service of copy of above notice acknowledged this 9th day of April, 1909.

IRVING WILLIAMSON,
*Attorney for Complainant to Original Bill and
 Certain Defendants on Cross-bill.*

Deposition of Thomas F. Lawrence.

Filed Apr. 26, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 28147.

MARIA WATERS
 VS.
 MARGARET KOPP et al.

Equity. No. 28147.

MARGARET KOPP et al.
 VS.
 MARIA WATERS et al.

Present: Mr. Irving Williamson, on behalf of the complainant to the original bill and on behalf of certain of the defendants to the cross bill.

52 Mr. Wilton J. Lambert, as attorney for certain of the defendants to the original bill and representing the complainants on cross bill.

STATE OF CONNECTICUT,
County of Hartford, ss:

Be it remembered that at 10:30 o'clock on the morning of the 17th day of April, 1909, I Charles A. Safford, a Notary Public in

and for the County of Hartford and State of Connecticut, in pursuance of the annexed notice, did call and cause to be personally present before me, at the office of the Secretary of the Hartford Life Insurance Company, No. 252 Asylum Street in the City of Hartford, State of Connecticut, Thomas F. Lawrence, Secretary of said Hartford Life Insurance Company, to testify on the part and behalf of certain of the defendants to the original bill herein and on behalf of the defendants on cross bill in a certain suit or matter of controversy now pending and undetermined in the Supreme Court, District of Columbia, wherein Maria Waters is Complainant and Margaret Kopp and others are defendants, and wherein Margaret Kopp and others are Complainants on cross bill and Maria Waters and others are defendants on cross bill, being an action in equity No. 28,147 in the said Supreme Court of the District of Columbia. And the said THOMAS F. LAWRENCE having been by me cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was examined orally
53 by the attorneys for the respective parties hereto, and did thereupon depose, testify and say as follows:

Q. What is your official connection with the Hartford Life Insurance Company? A. I am Secretary of that Company.

Q. How long have you been Secretary? A. Since September, 1907.

Q. How long have you been connected with the Hartford Life Insurance Company? A. I have been connected with the Hartford Life Insurance Company since June 1, 1903.

Q. In what capacities have you served? A. I came here June 1, 1903, from the Aetna Life Insurance Company where I had been prior to that time, as a clerk. In December, 1903, I was made Assistant Secretary which office I held until September, 1907.

Q. As Secretary have you charge of the papers and policies in connection with the parties insured in the Company? A. Yes, sir.

Q. I will ask you to look at your file in reference to the insurance on the life of John Shea and tell me how that started and what the character of the policy was that was first taken out?

Mr. WILLIAMSON: I object to any testimony of this witness which calls for a statement of facts not within his own knowledge, which he derives from files or from the records of the Company.

54 A. On the 5th day of December, 1881, the Company issued Certificate No. 50,963 on the life of John Shea, which certificate provided for a maximum indemnity of ten thousand dollars. This certificate was issued in a department of the Company known as the Safety Fund Department, in the Men's Division of that department, and was by its terms a post mortem assessment contract.

Mr. WILLIAMSON: I object to the answer as not based upon any knowledge of the witness but upon the contents of written papers.

Q. Was that the first policy that was taken out on the life of John Shea in this Company? A. No, sir, it was not.

Q. I wish you would start and tell us with reference to the first policy—what the character of that policy was.

Mr. WILLIAMSON: I object to a statement by the witness in response to question propounded, on the ground that it calls for information of which he has no personal knowledge and the papers themselves are the best evidence.

A. The first certificate issued by the Company on the life of John Shea was No. 3881, which was exactly the same contract in all respects except that it was issued in a department of the Company at that time known as the Security Fund Department. Sometime in 1885 or 1886 this certificate No. 3881 was exchanged for Certificate 50,963.

55 Q. What has become of the original policy No. 3881? A.

That is on file with the Security Company of Hartford, which was trustee of the Safety Fund and also of the Security Fund. This certificate was surrendered at the time that the Safety Fund certificate was issued in its stead, and the accumulations in the Security Fund were transferred by the trustees of the fund to the Safety Fund.

Q. Taking up the first policy, the one you designate as the Security Fund. I wish you would explain the nature of that policy—what you mean by the Security Fund.

Mr. WILLIAMSON: I object, as calling for the contents of a policy not produced and also for stipulations in reference to it which are necessarily in writing.

A. That certificate was by its terms a post mortem assessment contract. It provided for an assessment each quarter determined by the member's share of the actual mortality experienced in the previous quarter. It provided further for the payment of three dollars annually per thousand for expense due, which would belong to the Company in consideration for paying the expenses of carrying on the business. It provided further for the payment of ten dollars per thousand as a deposit to a fund called the Security Fund. This deposit was made and the fund treated in accordance with the terms of a trustees' agreement which was printed on each certificate. This trustees' agreement provided for the deposit of the fund with the Security Company of Hartford as trustee. It further provided that after the fund reached three hundred thousand dollars, the net income of the fund was to be returned by the trustee to this

56 Company, to be distributed in the form of dividends in the reduction of assessments as they became due and were paid on certificates entitled to participate in this distribution. It further provided that after the fund reach its limit of one million dollars par value, all further deposits to the fund were to be added to the income and to be distributed as was the income. This trustees' agreement provided that this fund should not be used for any purpose whatever as long as there was a certificate in force in the Security Fund Department unless at some time the Company neglected to pay a just claim, in which event the fund would be immediately divided up among the certificate holders in force in the department.

Mr. WILLIAMSON: I object to the answer for reasons stated in my objection to the question.

Q. As I understand it, there was originally a policy written by the Company known as the Safety Fund Department policy, then in 1885 or 1886 they started another character of policy which they denominated a Security Fund policy. That you have just explained, and Mr. Shea's original policy was No. 3881 in the Security Fund Department is that correct?

Mr. WILLIAMSON: I object for the same reasons as heretofore and because all this testimony is immaterial to the issues in this cause.

A. No, sir, that is not correct. There were two departments, the Security Fund Department and the Safety Fund Department. John Shea originally became a member of the Security Fund Department, in 1885 or 1886 when that department was merged into the Safety Fund Department he became a member of that Department.

Q. No. 3881 was a policy in the Security Fund. That was called in and policy 50963 was issued and he was transferred to the Safety Fund Department; is that correct? A. That is correct.

Q. What difference, if any existed between the contracts in policy No. 3881 and the contract in policy No. 50963?

Mr. WILLIAMSON: I object for the same reasons as heretofore.

A. They were exactly the same contract in every respect except that one was in the Security Fund department and the other in the Safety Fund department.

Q. Now you speak of the Security Fund and the Safety Fund. Was there any difference in the way of creating the two funds?

Mr. WILLIAMSON: I object for the same reasons as heretofore.

A. None whatever.

Q. Was the contribution made by a party becoming insured simply one contribution to these funds?

Mr. WILLIAMSON: I object for the same reasons as heretofore.

A. The contract provided for a deposit of ten dollars for each one thousand dollars for insurance.

Q. And the insured was only required to make one payment in connection with this ten dollars a thousand?

Mr. WILLIAMSON: I object for the same reasons and as leading.

A. Only one payment of ten dollars per thousand. It might have been made in installments and it might have been made in one sum.

Q. That fund is still in existence and now called the Safety Fund.

A. The Safety Fund is still on deposit with the Security Company, the trustee named in the contract, and held under the terms of the contract.

Q. When Policy No. 3881 was taken in and Policy No. 50963 issued in lieu thereof, was any additional contribution required of John Shea in reference to this Safety Fund?

Mr. WILLIAMSON: I object for the same reasons as heretofore and as immaterial to the issues in this case.

A. No, sir. John Shea completed his deposit on April 2, 1883, and no further payment to the Safety Fund was required of him or made by him.

Q. In taking up Policy No. 50963 I wish you would explain how payments were required thereon.

Mr. WILLIAMSON: I object for the reason that the contract speaks for itself.

A. Payments were required and made in exact accordance with the terms of the contract. The contract provided for expense dues at the rate of three dollars annually per thousand and for
59 assessments for the member's share of the actual mortality experienced in the men's division of the Safety Fund Department

Q. The expense dues were placed at three dollars a thousand. To whom did they go? A. The expense dues, in accordance with the terms of the contract, went to and belonged to the Company.

Q. That is what the Company received for managing this insurance, carrying the insurance, is that correct? A. That was what the Company received for acting in an administrative capacity, in taking care of the business in the Safety Fund Department.

Q. So that you have now given the details in reference to the Security Fund and the Safety Fund and also the rate of tax for the Company's administrative work. I wish you would explain in reference to the third fund, known as the Mortuary Fund.

Mr. WILLIAMSON: I object for the same reasons as heretofore.

A. Certificate No. 50963 provides for the formation of a Mortuary Fund for the payment of all indemnity matured by the death of members. This Mortuary Fund was created by the assessments. As mortuary assessments received at this office, they go into the mortuary fund, from which fund all death claims are paid.

Q. Now was it the system to wait until the actual amount of the mortuary requirements for the preceding three months were ascertained before levying an assessment, or did the Company levy its assessment on the basis of the probability of what would have to be
60 raised? A. The mortuary assessments have always been levied on the actual mortality experienced. The Company levies assessments quarterly, which assessments are due the first of March, the first of June, the first of September, and the first of December of each year. The assessment due the first of March covers the mortality of the Company for the three months ending December 31st previously.

Q. Would the Company assess an amount in excess of what the returns indicated the mortality to require? A. We assess for the exact amount required to meet the losses, but in our calculations as to the amount each member shall pay as his share we make an allowance for lapses.

Q. That is for some who might not pay? A. Yes, sir, that allowance we base on our past experience.

Q. Now the result of assessment in that way has been to create a fund in addition to what was actually required to pay off losses that you had, hasn't it? A. A Mortuary Fund has been created in that way. In making an allowance for lapses we assume a lapse rate which may be either greater or less than the actual lapse rate we experience. We may assess for three hundred thousand dollars and receive only two hundred and ninety thousand, or we may receive three hundred and ten thousand dollars. As a matter of fact the result has been the accumulation of a mortuary fund.

Q. What becomes of that fund? A. The fund is used for
61 the settlement of death losses. That is the only use that can be made of it under the terms of the contract.

Q. It is a fund to use to anticipate payments pending assessments coming in? A. Yes, as a matter of fact without that fund that department would be closed up inside of six months.

Q. That fund has been entirely created by assessments being paid by members in excess of what was actually necessary to meet the current losses? A. It has been created by an excess of payments for assessments over disbursements for death losses.

Q. The Hartford Life Insurance Company is a corporation, is it not? A. Yes, sir.

Q. This contract you speak of being made by different individuals is a contract between the individuals themselves and the Hartford Life Insurance Company?

Mr. WILLIAMSON: I object to the question as immaterial and as calling for the construction of a contract and for parol evidence of the contents of a written contract.

A. Yes, sir, I should say it was.

Q. The parties insured in these departments have no constitution or by-laws among themselves, have they? A. No, sir. They are governed entirely by the terms of their certificate contract.

Q. And that is entirely with the Hartford Life Insurance Company?

62 Mr. WILLIAMSON: I object as calling for the construction of a contract which speaks for itself.

A. Yes, sir.

Q. Are there any constitution or by-laws of any kind governing this policy?

Mr. WILLIAMSON: I object. The policy speaks for itself and unless such papers as are referred to are put in they can form no part of it.

A. Every one of these certificates is governed entirely by its own terms.

Q. These assessments that were made from time to time quarterly were levied entirely at the instance and upon the direction and discretion of the Hartford Life Insurance Company?

Mr. WILLIAMSON: I object because the witness cannot possibly know outside of his official term of service.

A. These assessments were levied in accordance with the terms of the contract for the actual mortality experienced.

Q. Yes, but I am speaking now about their being levied—who levies them? A. They are levied by the executive officers of the Company.

Q. The insured have nothing to say in reference to how much shall be levied at any quarter, have they? A. No, sir.

Q. The original policy No. 3881 was taken out in favor of Mrs. Shea, was it not?

63 Mr. WILLIAMSON: I object as calling for the contents of a paper which is not produced.

A. The original certificate No. 3881 was made payable to the member's wife, Maria Shea, if living; otherwise to his living representatives.

Q. Do you know who paid the premiums on either of those policies?

Mr. WILLIAMSON: I object because the witness cannot possibly know of his personal knowledge.

A. I do not. The records of the Company only show that the payments were made, they do not show by whom they are made.

Mr. WILLIAMSON: In response to a call made by Mr. Lambert at the last session in Washington on April 12, 1907, I produce carbon copy of a letter addressed by me on January 14, 1907, to the Hartford Life Insurance Company, which is evidently in reply to one from that Company which I do not find. I also produce a copy of a paper signed by Mr. Shea, the original of which was sent with my letter to the Company.

Q. Mr. Lawrence, I gave you notice to produce the correspondence between you and Mr. Williamson, or Mrs. Waters, or anybody, in reference to this alleged assignment of policy of John Shea. I will ask you for that correspondence. A. I have here four letters, one from Irving Williamson dated December 17, 1906, reading as follows:

64 "Irving Williamson
Attorney & Counsellor at Law
Columbian Building.

WASHINGTON, D. C., *December 17, 1906.*

The Hartford Life and Annuity Insurance Company.

GENTLEMEN: Mr. John Shea, of this City, is the holder of Certificate No. 50,963, issued by your Company December 5, 1881, for the sum of \$10,000. This Certificate is made payable to his wife Maria Shea, if she be living, if not to his legal representatives. Mrs. Shea died May 7, 1900, and her estate has been administered.

Mrs. Shea desires to know whether, upon proof satisfactory to your Company of the death of his wife, a new beneficiary can be named in the Certificate.

Will you kindly inform me as to this as soon as possible?

Yours truly,

IRVING WILLIAMSON.

(Secretary received Dec. 18, 1906.
Ans'd Dec. 18 Ans'd.)"

I have another from Irving Williamson dated December 21, 1906, reading as follows:

65 Secretary received Dec. 28, 1906.
Ans'd Dec. 26, Ans'd.

"Irving Williamson
Attorney & Counsellor at Law
Columbian Building
Washington, D. C.

DEC. 21, 1906.

Hartford Insurance Co.

GENTLEMEN: Referring to your letter of the 18th inst. I herewith enclose the two affidavits and assignments duly executed by Mr. John Shea. I also enclose the Policy No. 50963, for the purpose of having it transferred to Mrs. Maria Waters.

When the assignment is noted please return the policy direct to Mrs. Maria Waters 325 Maryland Ave. S. W. Washington, D. C. by registered letter.

Yours truly,

IRVING WILLIAMSON."

I have another from Irving Williamson dated January 14, 1907, reading as follows:

Secretary Received Jan. 15, 1907.
Ans'd Jan. 17, Ans'd.

"Irving Williamson
Attorney & Counsellor at Law
Columbian Building
Washington, D. C.

JAN. 14, 1907.

Hartford Life Ins. Co.

GENTLEMEN: In reply to your recent letter relative to the assignment of the Policy on the life of John Shea, I have to say that I am advised by Mr. Shea that the assignment as you now have it
66 is exactly what he wants, and I enclose a letter from him to that effect. Please return the Policy duly arranged in accordance with the assignment.

Yours truly,

IRVING WILLIAMSON."

I have a letter from John Shea dated January 12, 1907. It is evident from the correspondence that this letter from John Shea was enclosed in Mr. Williamson's letter of January 14, 1907.

Letter of John Shea dated January 12, 1907, marked Defendant's Exhibit 1.

It is understood that Mr. Lawrence is having a search made for letters written by the Company in reference to this alleged assignment, to Irving Williamson and when found they are to be copied into the record at this place.

The following letters were produced.

C.

"HARTFORD, Dec. 18, 1906.

Mr. Irving Williamson, Columbian Building, Washington, D. C.

DEAR SIR: Replying to your favor of the 17th, I enclose herewith the necessary blanks to effect the change desired. The first blank should be signed and sworn to by the physician and undertaker in attendance upon the late Mrs. Shea. Then the assignment blanks should be filled, dated and signed, in duplicate by Mr. Shea, and all these papers returned to this office with the policy for approval and record.

Very truly yours,

CHAS. H. BACALL,
Secretary."

67

C.

"HARTFORD, Dec. 26, 1906.

Mr. Irving Williamson, Columbian Building, Washington, D. C.

DEAR SIR: Answering your favor of the 21st, I beg to call your attention to the fact that the assignments submitted are made to Maria Waters, daughter, absolutely, whereas it is our custom in all assignments to provide that upon the death of the assignee the policy shall revert to the insured, giving him the privilege of naming a substitute beneficiary. I call your attention to this matter because in many cases the assignment is made in this way through inadvertence and causes trouble in the event of death. I return all the papers awaiting your further advice.

Very truly yours,

CHAS. H. BACALL,
Secretary."

C.

"HARTFORD, Jan. 17, 1907.

Mr. Irving Williamson, Columbian Building, Washington, D. C.

DEAR SIR: Replying to yours of the 14th, we beg to advise you that the assignment of policy #50963 has been placed on file for such attention as it may deserve when the policy becomes a claim. Duplicate has been attached to the policy, which we return herewith.

Very truly yours,

T. F. LAWRENCE,
Ass't Secretary."

68 Q. I show you what purports to be a carbon copy of letter of July 20, 1908, to Mrs. Maria Waters, and ask you to tell me what that is. A. That is a copy of a letter written by the Hartford Life Insurance Company over the signature of its Secretary, on July 20, 1908, to Maria Waters, acknowledging receipt of papers in connection with claim under policy No. 50963, on the life of John Shea, stating that the papers are not complete as they are not accompanied by certified copy of the record of death as required by the Company's rules.

Q. I will ask you where the letter is to which this was a reply. A. Apparently there was no letter to which this was a reply. The blanks were sent in without an accompanying letter. We wrote to Maria Waters acknowledging receipt of the papers from her because our previous correspondence had been with her.

Q. What was the first notice that your Company had of the death of John Shea? A. On July 14, 1908, we received a letter signed by Maria Waters advising us of the death of John Shea, requesting that we advise her what procedure to follow in making claim. Said letter is as follows:

69 Secretary Received July 14, 1908.
Ans'd 7/14/08.

"Residence Phone, Main 6708. Office Phone, Main 3507.

John O. Waters
Registered Plumber and
Gas-Fitter
917 E Street N. W.

Jobbing promptly attended to. Estimates cheerfully furnished.

WASHINGTON, D. C., *July 13, 1908.*

Hartford Life Ins. Co., Hartford, Conn.

GENTLEMEN: I desire to notify you of the death of John Shea on the 12th day of July, 1908, at 2:10 P. M. He was insured in your company for Ten Thousand Dollars (\$10,000), policy #50,963. This policy was assigned to me, his daughter, on the 21st day of December, 1906, as per approved agreement.

I request that you inform what procedure you require to secure check for the policy.

An early reply will be appreciated.

Yours truly,

MARIA WATERS,
325 Md. Ave., S. West., D. C."

70 Our letter to Mrs. Maria Waters under date of July 20, 1908, referred to above reads as follows:

"DC.

JULY 20, 1908.

Mrs. Maria Waters, 325 Md. Ave. S. W., Washington, D. C.

DEAR MADAM: We are in receipt of papers in connection with claim under policy 50963 issued by this Company upon the life of John Shea.

We find that you failed to forward a certified copy of the record of death made by the public officer whose duty it is to keep such records, as is required by the rules of the Company and so distinctly stated in red ink in the instructions on the fourth page of the blanks sent you.

On receipt of this certificate, the claim will receive further attention.

Very truly yours,

_____,
Secretary."

Q. I show you another paper and ask you what that is? A. This is a letter received by the Company September 16, 1908, dated September 14, 1908, signed by Maria Waters, and reads as follows:

71 Secretary Received Sep. 16, 1908.
Ans'd — — —, —.

325 Maryland Ave. S. W.,

WASHINGTON, D. C., *September 14, 1908.*

Hartford Life Ins. Co., Hartford, Conn.

GENTLEMEN: It is now 60 days since the death of John Shea and I have complied with all your requirements.

I would like to have the check for the amount due me, and do not understand why I have not received it.

Please let me know when I can expect settlement. An early reply will be appreciated.

Respectfully yours,

MARIA WATERS."

Q. I show you another letter and ask you what that is. A. That is a letter received by the Company September 16, 1908, signed by Irving Williamson dated September 15, 1908, which reads as follows:

Secretary Received Sep. 16, 1908.
Ans'd — — —, —.

"Irving Williamson,
Attorney & Counsellor at Law,
Columbian Building,
Washington, D. C.

SEPTEMBER 15TH, 1908.

Hartford Life Insurance Company.

GENTLEMEN: As you have been heretofore advised Mr. W. J. Lambert and myself have been appointed and qualified under decree of the Probate Court of this District, as Collectors of the estate of John Shea, and I understand copies necessary to show that fact have been forwarded to you. As some time has elapsed since

72 this was done, we would like to know when the fund will be paid over to us, and what further steps, if any, we are to

take before that will be done. I enclose stamp and request the favor of an early reply.

Yours truly,

IRVING WILLIAMSON."

Q. I wish you would identify those three letters there. A. I have before me a letter book copy of letter dated December 18, 1906, to Irving Williamson, signed by Charles H. Bacall, at that time Secretary of the Company, which reads as follows:

C.

HARTFORD, Dec. 18, 1906.

Mr. Irving Williamson, Columbian Building, Washington, D. C.

DEAR SIR: Replying to your favor of the 17th, I enclose herewith, the necessary blanks to effect the change desired. The first blank should be signed and sworn to by the physician and undertaker in attendance upon the late Mrs. Shea. Then the assignment blanks would be filled, dated and signed, in duplicate by Mr. Shea, and all these papers returned to this office with the policy for approval and record.

Very truly yours,

CHAS. H. BACALL,
Secretary."

73 I have before me a letter dated December 26, 1906, to Irving Williamson, signed by Charles H. Bacall, at that time Secretary of the Company, which reads as follows:

C.

"HARTFORD, Dec. 26, 1906.

Mr. Irving Williamson, Columbian Building, Washington, D. C.

DEAR SIR: Answering your favor of the 21st, I beg to call your attention to the fact that the assignments submitted are made to Maria Waters, daughter, absolutely, whereas it is our custom in all assignments to provide that upon the death of the assignee the policy shall revert to the insured, giving him the privilege of naming a substitute beneficiary. I call your attention to this matter because in many cases the assignment is made in this way through inadvertence and causes trouble in the event of death. I return all the papers awaiting your further advices.

Very truly yours,

CHAS. H. BACALL,
Secretary."

I have before me a letter dated January 17, 1907, to Irving Williamson, signed by T. F. Lawrence, at that time assistant Secretary of the Company, which reads as follows:

74

C.

"HARTFORD, Jan. 17, 1907.

Mr. Irving Williamson, Columbian Building, Washington, D. C.

DEAR SIR: Replying to yours of the 14th, we beg to advise you that the assignment of policy # 50963 has been placed on file for such attention as it may deserve when the policy becomes a claim. Duplicate has been attached to the policy, which we return herewith.

Very truly yours,

T. F. LAWRENCE,
Ass't Secretary."

Cross-examination.

By Mr. WILLIAMSON:

Q. Have you any records there which will determine the date of the policy which you have referred to as No. 3881? A. Yes, sir, I have here the original application which shows that certificate 3881 was issued December 5, 1881, and was dated that date.

Q. Is it not a fact that policy No. 50963 bears the same date? A. Yes, sir.

Q. And it was substituted then for the original policy? A. Yes, sir.

75 Q. And that was done by the action of the Company, as I understand it? A. Yes, with the consent of the certificate holders.

Q. But it was not volunteered by the policy-holders—it was brought to their attention by the Company? A. As far as I know, it was.

Q. In other words, so far as you know, this change in the scheme that you have referred to did not originate with the policyholders but with the Company? A. I should say it must have.

(By Mr. LAMBERT:)

Q. What was the actual date of the delivery of the policy No. 50963? A. I am unable to state the actual date of delivery. In my opinion it was between September 1, 1885, and December 1, 1885.

THOMAS F. LAWRENCE.

Subscribed and sworn to before me.

CHARLES A. SAFFORD,
*Notary Public.*STATE OF CONNECTICUT,
County of Hartford, ss:

I, Charles A. Safford, a Notary Public in and for the County of Hartford, State of Connecticut, do hereby certify that on the 17th day of April, 1909, at 10:30 o'clock in the forenoon in the year of our Lord one thousand nine hundred and nine, I was attended at
76 the office of the Secretary of the Hartford Life Insurance Company, 252 Asylum Street, in the City of Hartford, State of Connecticut, by the attorneys for the Complainants and defendants, and Complainants on cross bill and defendants on cross-bill in the cause in the caption of said deposition named, as set forth in the preambles of the session thereof; and by the witness, Thomas F. Lawrence, who was of sound mind and lawful age. And the said witness was by me carefully cautioned and sworn to testify the truth, the whole truth and nothing but the truth, touching the matters of controversy in said cause, and thereupon was examined orally by the attorney for the complainants and attorney for the defendants. And that the said deposition of said witness was taken down by a stenographer from the statements when and as made by the witness; and that thereafter said deposition was carefully read by him and sworn

and subscribed to by him before me on the 22d day of April, 1909, in the county and state aforesaid.

I further certify that I have retained the deposition (comprising only twenty one typewritten pages) for the purpose of sealing up, directing and mailing the same with this certificate of the reason aforesaid for taking said deposition, with my own hand to the Clerk of the Court for which the same was taken, to wit, the Supreme Court of the District of Columbia.

* * * * *

In testimony whereof, I have hereunto set my hand and official seal this 22d day of April, in the year of our Lord One thousand Nine Hundred and Nine.

[SEAL.]

CHARLES A. SAFFORD,
Notary Public.

77

Testimony on Behalf of Complainant.

Filed May 30, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS
vs.
MARGARET KOPP et al.

FRIDAY, *January 22*, 1909, 2 o'clock p. m.

Met pursuant to notice, at the office of Irving Williamson, Esq., in the Columbian Building, to take testimony on the part of the complainant in the above entitled cause.

Present: Irving Williamson, Esq., solicitor for the complainant; Wilton J. Lambert and Rudolph H. Yeatman, Esqrs., solicitors for the defendants, and the Examiner:

Whereupon—

IRVING WILLIAMSON, being first duly sworn, testified as follows:

In December of 1906, at the request of Mr. John Shea, I made application to the Hartford Life Insurance Company for the necessary blanks to effect an assignment of the policy of insurance mentioned in these proceedings, and I received a letter, which I offer in evidence, from that Company, dated December 18th, 1906, transmitting the blanks.

(The letter referred to is filed by the Examiner, marked Complainant's Exhibit No. 1.)

78 Mr. LAMBERT: I object to the introduction of this letter as irrelevant and immaterial to the case, and as not in any way binding the defendants in this case.

The WITNESS: On receipt of these blanks, which were two duplicates of each other, they were both executed by Mr. Shea at my office,

and were transmitted by me with the policy to the Insurance Company. The policy was returned to me by the Company with one of the duplicate assignments annexed. When Mr. Lambert and myself were appointed collectors it was found that, in order to collect the money on the policy, it would have to be surrendered to the company, and as the question as to the disposition of the fund was to be decided in the future, we agreed by stipulation that I produce and ask that it be copied into the record, that the policy might be photographed, and the photograph used in lieu of and with the same effect as the original. At that time Mr. Lambert represented Mrs. Kopp one of the defendants, but it was agreed between us that the stipulation should apply to the case of any other defendant whom he might represent. That was the fact, Mr. Lambert?

Mr. LAMBERT: Yes, that is all right.

(The said stipulation referred to is here copied into the record by the Examiner, as follows:)

"It is hereby stipulated between Wilton J. Lambert, attorney for Margaret Kopp, and Irving Williamson, attorney for Maria Waters, that the photographic reproduction, made by B. M. Clinedinst, photographer, in duplicate, one of the copies being hereto annexed, of the policy or certificate of membership, issued by the Hartford Life and Annuity Insurance Company, of Hartford, Connecticut, on December 5th, 1881, on the life of and to John Shea, numbered 50,963, and the photographic reproduction, made by B. M. Clinedinst, photographer, in duplicate, one of the copies being hereto annexed, of the assignment, dated December 21, 1903, by said John Shea, of said policy, to Maria Waters, may be used in any litigation over the proceeds of said policy, or with respect to the will of said John Shea with like effect as though the original of said policy and the original of said assignment had been produced in such litigation. The reason for this stipulation is that the original of said papers must be surrendered to said Company by the Collectors appointed by the Supreme Court of the District of Columbia, holding a Probate Court, in order to secure from said Company, the amount due under said policy, and being so surrendered, there is no way in which said papers can be secured in this jurisdiction for proof.

Signed in duplicate this 13 day of October, 1908.

WILTON J. LAMBERT.
IRVING WILLIAMSON.

Mr. WILLIAMSON: I now offer in evidence the photograph of the policy, it being, for convenience, photographed in five parts, and as to the assignment which is annexed to it, bearing date December 21st, 1903, it was signed by Mr. Shea in my presence, in duplicate, as I have already said, and I recognize his handwriting in the signature to the assignment, which is witnessed by me.

(And the same are filed by the Examiner, marked Complainant's Exhibits from 2 to 6, both inclusive.)

Mr. WILLIAMSON: I desire to offer in evidence the decree of the

Probate Court appointing Mr. Lambert and myself as Collectors, passed in Administration case No. 15,443, and I want to say that after we were appointed Collectors we negotiated with the Insurance Company, and the result was that we collected the amount due on the policy, and it is now in bank to our credit as Collectors.

80 Cross-examination.

By Mr. LAMBERT:

Q. Mr. Williamson, you say that Mr. Shea spoke to you about communicating with the Company in reference to an assignment of this policy. When was it he first spoke to you? A. My recollection is that it was on the—that he first spoke to me on the same day that I wrote to the Company, which is, as shown by the correspondence, December 17th 1906.

Q. Where did you see him that day? A. He came to my office.

Q. Who was with him? A. No one.

Q. By himself? A. Yes, sir.

Q. Who brought him to your office, do you know? A. I saw no one with him. He came into my office, as he had frequently done before, alone, as far as I know.

Q. Who was present at your interview with him? A. No one at all.

Q. When did you next see him? A. I saw him on the 21st of December, when he executed the assignment.

Q. Where was it that you saw him then? A. At my office.

Q. Who was with him then? A. No one.

81 Q. Anybody else present besides yourselves? A. No one at all.

Q. You were attorney for Mr. John Shea, were you not? A. I was, yes, sir.

Q. And this matter was all in connection with your attorneyship for him, is that it? A. No, sir. I was his attorney in the partition proceedings.

Q. This that you are speaking of was professional work that you were doing for him, is that it? A. This particular thing, yes sir.

Q. And you also were attorney for Mr. and Mrs. Waters, were you not? A. Whenever they have seen fit to employ me I have been their attorney.

Q. You have been attorney for them in numerous matters for a number of years, have you not? A. I recollect the partition proceeding; I recollect a suit which I defended for Mr. Waters, I think, and that is all I know of.

Q. Did you ever see Mr. John Shea at Mr. Waters's house? A. I saw Mr. John Shea at Mr. Waters' house immediately after the death of his wife, when I was there with the view of making some arrangement with the heirs by which they distributed some personal effects as well as I remember.

82 Q. Do you know where Mr. John Shea was living at the time that you transacted this business for him in December, 1906? A. He was living at the house of Mr. Waters, 325 Maryland Avenue.

Q. Had he been living there for sometime? A. I believe that was his residence before and after the death of his wife.

Q. Now, at the time of the death of his wife, she owned this property in which Mrs. Waters lived, didn't she? A. I don't think she did.

Q. You don't think so? A. That is my recollection, that she did not; she may have.

Q. Now, was it before or after this time that you had been employed in connection with drawing a will for Mr. Shea? A. Before which time?

Q. This occasion in December, this assignment? A. Oh, the will was, I think, a week or more prior to that.

Q. A week or more prior to the assignment? A. Yes, sir.

Q. Well, who had spoken to you about the will—drawing that will for Mr. Shea? A. Mr. Shea himself.

Q. Where did he speak to you about it? A. He came here at the office. I never saw him but once, as I remember, at 325 Maryland Avenue, and that was immediately after the death of his wife.

83 Q. What conversation did you have with Mr. or Mrs. Waters in reference to the will? A. I never saw Mrs. Waters in connection either with the will or the assignment, and had no conversation whatever either with her or with Mr. Waters in reference to the will or assignment until sometime after they were both made.

Q. What communications did you have with her? A. No communications of any kind, either verbal or written.

Q. Where was this paper writing, alleged to be Mr. Shea's will, executed? A. Executed here in the office.

Q. Do you remember the date of that? A. I cannot state from memory. It was sometime earlier in December, than the assignment.

Q. Were you one of the witnesses to the will? A. My recollection is that I was, and my then typewriter was the other witness.

Q. What did you do with this paper writing? A. Which one?

Q. The will. A. I put it in an envelope and gave it to Mr. Shea—sealed envelope.

Q. You didn't keep it yourself? A. No, sir.

Q. Do you know what he did with it? A. I do not.

84 Q. And all during that time he was living with Mr. and Mrs. Waters, wasn't he? A. As far as I know, that was his residence.

Mr. LAMBERT: I give notice of a motion to strike out all this testimony in reference to Mr. Shea at the proper time, and the conversations had with Mr. Shea in reference to this business, on the ground of its being confidential communications between attorney and client.

The WITNESS: You mean these things that you have asked me about?

Mr. LAMBERT: Yes. I didn't know until I asked you that they

came under the head of such communications. However, I just want to reserve my right on that.

IRVING WILLIAMSON.

Subscribed before me this 20th day of May, 1909.

J. ARTHUR LYNHAM,
Examiner.

NOTE.—It is stipulated that the note of acceptance by the Company of the assignment is somewhat indistinct on the photograph, and that the following page containing same shall be copied into the record.

The said page is as follows:

Form 0221. ("Duplicate.")

All Assignments Subject to Proof of Validity and Assurable Interest.

All assignments must be made in Duplicate.

Policy No. 50963. \$10000.

85 Know all men by these presents, that I John Shea of Washington, D. C., the insured under Policy No. 50963 in the Hartford Life Insurance Company hereby transfer, assign, and set over unto Maria Waters, of Washington, D. C., relationship my daughter, all my right, title and interest in and to the said policy of insurance, subject to the terms and conditions thereof, and I, ———, of ——— and I, ——— of ———, the present beneficiary, named in said policy, hereby relinquish all right, title and interest in and to the above named policy of insurance and consent to the assignment made herein.

Witness my hand and seal this 21st day of December, 1906.

JOHN SHEA,	[L. S.]
	<i>Policy-holder.</i>
———,	[L. S.]
	<i>Beneficiary.</i>
———,	[L. S.]
	<i>Beneficiary.</i>

Witness:

IRVING WILLIAMSON.

Officially consented to and recorded subject to proof of validity of assignment and insurance interest, according to condition and agreement in policy.

Hartford, Conn., Jan. 15/07.

CHAS. H. BACALL, *Sec'y*,
By C. W. E."

86

Testimony on Behalf of Defendants.

Filed Jun- 16, 1909.

In the Supreme Court of the District of Columbia.

In Equity. 28147.

MARIA WATERS

VS.

MARGARET KOPP et al.

TUESDAY, *March* 23, 1909—3 o'clock p. m.

Met, pursuant to notice at the office of Messrs. Lambert and Yeatman, to take testimony on the part of the defendants in the above entitled cause.

Present: Wilton J. Lambert and Rudolph H. Yeatman, Esqs. solicitors for the defendants; Irving Williamson, Esq., solicitor for the complainants and the Examiner.

Whereupon—

Mrs. ANNIE MULLOY, one of the defendants, and a witness in her own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. LAMBERT:

Q. Mrs. Mulloy, you were a daughter of John Shea? A. Yes.

Q. And Maria Shea? A. Yes, sir.

87 Q. Do you remember when your mother died? A. July 1897—May 1897.

Q. It don't make much difference about the month, I just want to know about when she died. Where was she living then? A. Mamma died in 1900. She was living at 325 Maryland Ave. southwest.

Q. At the time of her death how many children did she leave? A. She left five girls and one boy.

Q. Name them. A. Mrs. Waters, Mrs. Kopp, myself—I will give them in rotation, as they go—Mrs. Jewell, my brother Ned, and Alice.

Q. And she left your father surviving her? A. Yes, sir.

Q. Where did your father live after the death of your mother?

A. He lived at the home on Maryland Avenue.

Q. How long? A. Until the time of his death.

Q. Whom did he live there with? A. He lived with Mrs. Waters.

Q. For how long prior to his death did he live with Mrs. Waters?

A. Well, I don't know, but the rest of his family had been living there for a while after mamma's death, and they separated, and Mrs. Waters still continued to live there, and he stayed with her.

88 Q. How long prior to his death was he living there with Mrs. Waters? Just approximately, I don't care; two or three or four years, or whatever you can say? A. I don't know; I could not say.

Q. Well, was it more than two years? A. Yes.

Q. Who composed the household there during the last two years of his life? A. Well, I have an idea that he lived there about seven years, maybe longer than that, but the last two years just he and Mr. Waters and his family occupied the premises.

Q. Who composed Mr. Waters' family? A. He and his wife and son and daughter.

Q. How old were the children of Mr. and Mrs. Waters? A. Well, there was at that time a girl about sixteen or seventeen, and a boy about a year or two younger.

Q. About when did Mr. Shea die, your father? A. Let's see, Pap died on the 13th,—no, the 12th of July 1898, I think.

Q. 1908? A. Yes, sir.

Q. How many of his children were living at the time of his death? A. Just the five girls.

89 Q. What became of the boy Ned? A. Ned, he had been living for a while with me, and he left me and he went back with Mrs. Waters, and a short while after he left me and went back with Mrs. Waters he died very sudden in Mrs. Waters' house.

Q. Who did Ned leave? A. Ned just left his wife at that time. He had no children at the time of his death.

Q. Was there any child born afterwards? A. There was a child born to his wife afterwards, a boy.

Q. Is that boy still alive? A. Yes, sir, to my knowledge, he is, the last time I saw him.

Q. What was the cause of Ned's death? A. They say it was—he was overcome by gas, they told me.

Q. During the last two years of your father's life how often did you see him? A. Very seldom I went to see Pap; I never hardly went down there to see him. I used to pass by once in a while and stop in.

Q. Well, did you see him a dozen times or two dozen times, or how many? A. Yes, I saw him about—well, I did see him often too. I saw him several times on the street and spoke to him.

Q. You say you didn't go down there to see him often? Why didn't you go down there to see him? A. Why, I never cared so much about going down there.

90 Q. Why? A. I don't know.

Q. Were you and your father on friendly terms? A. Yes, Pap and I were always on good terms, always.

Q. What was his condition at the time you have spoken of seeing him during the last few years of his life? A. Well, nearly every time I saw him he was under the influence of drink, every time I saw him.

Q. Did you ever have any conversation with him about his life or his surroundings and his living?

Mr. WILLIAMSON: Objected to as calling for incompetent and immaterial evidence.

A. Well, he used to tell me—he has spoke of how he had been treated down there, and he was hounded and he was watched; any place he went the children, either one of the two, was watching him and following him every where he went; and several times I told him to call on me; that I lived near enough to him and he said that he would like to come but it was through the influence of the people in the house that he could not come there.

Q. What people do you mean? A. Mrs. Waters and her family I suppose.

Mr. WILLIAMSON: I object to the answer as incompetent.

Q. Did your father ever have any means of his own? A. No, none that I knew of.

91 Q. What means did your mother have?

Mr. WILLIAMSON: I object to that as immaterial, and as not properly provable by the oral statements of this witness.

A. Oh, Mamma had considerable property; had an income from her estate. She was the main support of him, I suppose, and I never knew him to do any kind of work at all. Everything was in her name, so far as I know.

Q. Where did your mother get her property?

Mr. WILLIAMSON: Objected to as immaterial and not competent to be proved by this witness.

A. She kept store; she accumulated her property.

Q. Now, did your mother ever take out any insurance on your father's life? A. Yes, sir; she did.

Mr. WILLIAMSON: Objected to as leading and suggestive, and as assuming a fact.

Q. Now, the controversy here Mrs. Mulloy, is over the proceeds of an insurance policy which was taken out on your father's life during your mother's lifetime? A. Mamma, she was—had Pap's insurance.

Mr. WILLIAMSON: Objected to as not responsive to any question having been asked.

Q. I will ask you who took that insurance out on your father?

Mr. WILLIAMSON: Objected to for the reason that it can only be proved by the application, and is not to be proved by this sort of evidence, and is incompetent and immaterial.

92 A. Mamma had Pap insured for her own benefit.

Mr. WILLIAMSON: I object to the answer because it undertakes to show what was the contents of the policy.

Q. Do you know who paid the premiums on that insurance? A. My mother.

Mr. WILLIAMSON: Objected to as immaterial.

Q. Your mother? A. Yes, sir.

Q. Do you know how long she paid the premiums?

Mr. WILLIAMSON: Just to save incumbering the record, may I have it understood that all my objections apply to all this testimony?

Mr. LAMBERT: Yes.

Q. (Continuing:) Do you know how long she paid it? A. She paid it up to the time of her death, right straight along.

Q. Do you know out of what funds she paid it? A. Out of her own funds; out of what she had.

Q. Now, Mrs. Mulloy, after your mother's death, you and the other heirs sold out most of the property and divided the proceeds amongst yourselves, I believe. A. Yes, sir.

Q. I will ask you whether any arrangement was made in reference to keeping up this insurance policy? A. Yes. She always said that if anything happened to her she wanted the children to see that it was kept up.

93 Mr. WILLIAMSON: I object to the answer as incompetent and not responsive to the question, and move to strike it out.

Q. I am asking you now whether or not these children your mother's children, got together and made any arrangement about keeping up the insurance policy? A. Yes, we did get together.

Q. Was there any contribution made by the children for that purpose? A. Yes, sir.

Q. What was that contribution, if you know? A. We all put in our share, share alike at the time to keep Pap's insurance up, and we all paid it at the time.

Q. Do you know how much each one put up? A. Three hundred dollars.

Q. A piece? A. Yes, sir.

Q. Now, have you ever had any conversation with your mother about this insurance policy?

Mr. WILLIAMSON: Objected to as incompetent, and also incompetent under section 1064 of the code.

A. She always told us to see that it was kept up, and that us children would reap the benefit of it.

Q. When was it you first had any knowledge of Mrs. Water's claiming all of this insurance policy? A. Well, I could not exactly say, but it was sometime after Pap's death. I never knew that such

94 a thing as a will or anything of the kind had been made. In fact, I don't know how Pap could have willed it over to her, anyhow, because it was not Pap's; it was Mamma's. It was left to Mamma and she made it so—always did tell us that at her death it was to go to us children. I don't see how Pap had anything to do with it.

Mr. WILLIAMSON: I move to strike out the answer as volunteered and incompetent.

Q. What is your opinion as to Mr. or Mrs. Waters having any

improper or undue influence over your father during the last two years of his life?

Mr. WILLIAMSON: That is objected to as incompetent on its face.

A. Well, I think they had an influence over him. He often used to tell me that he could not go anywhere unless he had either one of the children with him.

Q. Do you know anything about this attempted making of a will or assignment of this policy? A. Not until I heard some of them say that he had met Mrs. Waters in one of the parks, somewheres around, and by an appointment and he had made a will leaving it to her.

Mr. WILLIAMSON: I move to strike out the answer as hearsay.

Q. Were you ever forbidden the house to see your father? A. No sir, never, I was not. Every time I went there I was always allowed to see him.

Q. Why was it you disliked to go there?

Mr. WILLIAMSON: I object to that as immaterial.

95 A. Well, I don't know. At one time Mrs. Waters and I was not on very good terms, and when I was leaving home, and after I did leave, then I hadn't any more desire to go back again.

Q. Did your father get any share of the proceeds of the sale of this property of your mother? A. I think he did. Yes, sir, I think he did.

Q. Did your father have any property at the time of your mother's death in his name at all? A. Yes, sir, I think at Mamma's death, if I am not mistaken I think he did have a piece of property.

Q. Where was that? A. Consisting of a lot on Maryland Ave. running back to an alley in the rear.

Q. Did he have any property in Virginia? A. No, sir; he did not; Mamma owned it.

Q. What became of your father's interests in this property? A. I never knew what became of it.

Mr. WILLIAMSON: Objected to as not to be proved by the testimony of the witness.

Q. You say you never knew? A. No, sir; I don't know what became of his part that he had, but I know that he did tell me himself—he has told me that the last dollar he had had went, he says, to the Waters, he says, to help them out in a flat, he says, that was being erected on Maryland Ave. and at the death of my brother the insurance of two or three thousand dollars, I don't know

96 what his insurance amounted to, but he said—I heard him say—he told me right to my face when I was in Waters' house at the time, he said that the \$3,000 that they got from Ned's insurance put them on their feet, he says, in reference to the flat. He said what he had, went to the Waters to help them out, he says, in these flats.

Q. In whose flats, Mr. Waters' flat? A. No, he said in the flats.

He says that is all; to help out in the flats, he says, and then at the death of my brother, he says, that the insurance what came from his death, he says, put Waters on his feet.

Q. What insurance did your brother leave?

Mr. WILLIAMSON: Objected to as immaterial.

A. I don't know exactly. I never did know how much his insurance amounted to.

Q. After your father's death did you have any conversation with Mrs. Waters? A. Yes, I had conversation with her.

Q. Did Mrs. Waters ever present any paper to you to sign? A. Yes, she brought a paper to me; came to my house and asked me to sign a paper.

Q. Well, now, state what conversation took place between you and Mrs. Waters on that occasion. A. Well, that was the time she came to me and asked me to sign that paper, and wanted me to acknowledge that Pap had made a will leaving this insurance, or whatever it may be, to her, and I told her I would not sign it; but I never
97 knew of such a will; never heard of it; and I refused to sign it; and she got mad at me, and she told me when she left, she said I would lose a good friend by not signing the paper; that she always was a friend and that I would need her later on, and something of the kind, and I would not sign it. I told her right up and down that I would not sign it.

Q. Did you see that paper? A. I didn't pay any attention to it. she brought it to me and told me to sign it, and it was something in it about Pap's will; I never paid much attention to it; and she showed me the signature of my sister Alice and another sister,—and my sister Mrs. Jewell; they had put their signature to it; and I refused to put mine.

Q. Did you read any part of the paper?

Mr. WILLIAMSON: I object to any statement of the contents of the paper.

Mr. LAMBERT: I asked her if she read any part of the paper.

A. Well, I can't remember now what it was, but something about his estate and where he had left each of us \$300 what we had put in to keep his insurance up; and about this lot at Fort Myer, that he had turned over to her and wanted me to sign the paper agreeing to let her have it. I told her I would not sign it and she got mad and went on out.

Mr. WILLIAMSON: I move to strike out the answer as giving the contents of a written paper.

Q. You spoke of a lot at Fort Myer. What do you
98 mean by that? A. My mother owned a lot at Fort Myer before her death.

Q. Fort Myer, Virginia? A. Yes, sir.

Q. What became of that? A. I don't know what became of it, but I heard afterwards that my father claimed it and since his death I heard that Mrs. Waters has claimed it.

Q. Prior to the taking out of this insurance that we are now

litigating about, did your mother ever take out any other insurance on your father.

Mr. WILLIAMSON: Objected to as immaterial.

A. No; not that I know of.

Q. Was there ever any change made in the insurance policy that you know of? A. No, none that I know of, only at the time she spoke of this insurance about leaving it to the children; that is the only thing I know.

Q. You don't know anything about any change being made in the character of the insurance from a straight life to an assessment policy, or anything like that? A. I don't know.

Cross-examination.

By Mr. WILLIAMSON:

Q. When was this policy taken out, Mrs. Mulloy? A. I could not say; sometime, I don't know.

Q. How many years ago, to the best of your recollection?
99 A. I haven't any idea.

Q. How many times did you see your father in the last two years of his life? A. Well, I saw him every once in a while; go down there sometimes and see him; met him on the street on several occasions.

Q. Now, let's separate them. How many times did you go to see him in the last two years of his life? A. I could not exactly say how many times.

Q. What is your best recollection? A. Well, every month, I suppose maybe I would see him.

Q. Do you say that you went during the last two years of his life, you went to see him every month at the house? A. No, I didn't say that I went to the house to see him; I had met him on the street.

Q. Well, I am confining myself now to the number of times that you saw him at the house, Mrs. Mulloy. How many times in the last two years of his life did you see him at the house? A. Five or six times in a year, I guess.

Q. When was the last time?—the last time that you saw him at the house? A. I could not exactly say, but I had been over there several times before his illness.

Q. When was the last time? A. I could not say.
100 Q. Now, how many times did you see him on the street in the last two years of his life? A. I have met him out two or three times.

Q. Tell me the number of times, to the best of your recollection. A. Well, I guess about a half dozen times, I guess.

Q. In the two years? A. Yes, sir.

Q. No more than that? A. No.

Q. Where did you see him? A. Oh, saw him around the Botanical Garden a couple of times; saw him on Pennsylvania Ave. once or twice.

Q. Now, when was it he told you he was being watched and hounded? A. Once when I was right in Mrs. Waters' house; she

had gone out; I went there—happened to pass by there. I had my baby and I happened to pass by there, and he was sitting out front, and I stopped and talked to him, and he invited me in, and I went in, and I sat down and had a talk. I asked him why he didn't come to see me. I said "I am only a few squares from you, why don't you come over to see me?" He says "I can't go anywhere," he says, "without either one of the children following me." He says "They watch me", he says, "and hound me" he says "and I can't go anywhere."

Q. Now, how long was that before his death? A. About a couple of years, I suppose.

Q. Was that the last time that he told you that he was
101 watched and hounded? A. Oh, he had told me that several times.

Q. Well, was that the last time? A. No, I don't know; he may have said it after that.

Q. Well, did he say it after that? A. I suppose he did, I don't know.

Q. I am not asking you what you suppose, Mrs. Mulloy. I asked you what the fact is. A. Yes, I guess that is about the last time.

Q. Now, when you met him on Pennsylvania Ave. and around by the Botanical Garden was there anything to prevent his going to see you when he was out then? A. No, I don't know that there was.

Q. When you had this talk with him at the house, when he said he was watched and hounded, who was watching him then? A. The son was in the house at the time.

Q. What is the son's name? A. John Waters, Jr.

Q. He was in the house at the time—where abouts in the house?
A. He was right in the kitchen.

Q. Where were you talking to Mr. Shea? A. In the parlor.

Q. What month was this in, winter or summer? A. In the summer time.

Q. Mrs. Waters was out? A. Yes, sir.

Q. Did the son, John Waters, come into the parlor?
102 A. Yes, sir, he did.

Q. How many times? A. Came in and out.

Q. Were you alone with Mr. Shea at any time? A. Yes, the boy went out again and came back a couple of times again.

Q. On every occasion that you visited Mr. Shea at the house where he lived, were you ever alone with him? A. I was, yes, sir; he seemed to be alone at the time himself.

Q. Was anybody watching or listening to what was being said, that you know of, on the occasion of those visits? A. Well, the boy was there, in and out.

Q. On the occasion of every visit that you made the boy was there? A. Well, if it was not the boy it was the girl.

Q. Well, on the occasion of every visit you made either the boy or the girl was there? A. Yes, sir.

Q. And were the visits made in the day or at night? A. Both day and night, but at that time—one particular time it was day time.

Q. Well, now, what particular time are you speaking of? A. When I spoke to him about coming over to see me and he said he was hounded and watched; that was during the day.

103 Q. That was during the day? A. Yes, sir.

Q. Did you ever visit him in the winter time, in the day time? A. No, sir.

Q. Only there in the summer? A. Yes, sir.

Q. So you never were there in the winter time at all? A. Oh, I have been there.

Q. But you said a moment ago that you—— A. Well, I have been in the winter at night when the family was there; when Mr. Waters and his family was there.

Q. Well, have you ever been there in the winter in the day time? A. No, sir.

Q. Where would you see Mr. Shea when you would go there in the winter at night? A. Sitting in the dining room or in the parlor; perhaps in the kitchen.

Q. Now, when was it that he was drunk during the last two years of his life? A. I could not say; he was mostly under the influence every time I went there.

Q. Well, was he under the influence of liquor when you saw him on the street? A. Yes, he was.

104 Q. Every time, then, that you saw him he was under the influence of liquor? A. Well, I would not say at every time, but on two or three different occasions in the street I have met him when he was under the influence.

Q. Well, you said that you had only met him about six times in the street? A. Yes.

Q. And about half the time—— A. (Interposing:) He was under the influence, yes, sir.

Q. And the other times, he was not, is that right? A. Yes, sir.

Q. Now, how was it when you met him at the house as to his being under the influence of liquor? A. The same way.

Q. Well, how the same way? A. Under the influence every time—nearly every time I saw him he was under the influence of drink.

Q. Well, was he so this time in the summer when he was sitting out in front of the house? A. Yes, sir, he was.

Q. And he was under the influence of liquor then? A. Yes, sir.

Q. A good deal under the influence then, wasn't he? A. Yes, a good deal. He called a boy, that is the boy came up there and he called the boy there and sent him after a can of beer, and the boy went up in the alley after an Italian to go after the beer for him.

105 Q. And that was the time when he told you that he was being hounded and watched? A. Yes. He sent the boy off.

Q. The boy was there to watch him, you say? A. Yes, sir.

Q. And he sent the boy away? A. He told the boy to go to the gate and call this Italian.

Q. And the boy went? A. The boy called him from the alley window. The man happened to come through the alley.

Q. And he was a great deal under the influence of liquor at this time? A. Yes.

Q. After the \$300 that the children put up was exhausted, did you put up any more money to pay premiums on the insurance policy? A. They came to me to put it up. I was satisfied to put it up, the same as any of the rest of them was.

Q. Did you put up any? A. No, I didn't put up any more at the time.

Q. Have you paid a single cent, except that \$300? A. Yes, sir, I did.

Q. Now when? A. Paid it before the \$300 was put up.

Q. After the time the \$300 was exhausted have you paid a single cent?

Mr. LAMBERT: She hasn't said it was exhausted; I object to that question.

106 Q. (Continuing:) Was not the \$300 exhausted a long while ago? A. I don't know what became of the \$300; I don't know whether it was exhausted, myself.

Q. Outside of the \$300, since that fund was created, have you put up any money at all? A. I don't know.

Q. Well, don't you know? A. I don't think I did. I don't know whether I did or not.

Q. Well, don't you know that you did not, Mrs. Mulloy? A. I don't know whether I did or not; I may or may not, I don't remember.

Q. Now, let's see about that. After the \$300 was put up have you paid a single cent on account of those premiums? A. I think I did.

Q. When? A. I think I did put in once or twice after that.

Q. Well, now, when—what month and what year? A. I don't know. I was not keeping track of it, and another thing——

Q. One moment. Just answer my question and then you can make all the explanation you want.

Mr. LAMBERT: You stopped her while she was answering it.

Q. How much did you pay? A. I don't know what I paid.

107 Q. Who did you pay it to? A. Mrs. Kopp was always the one the money was given to.

Q. Did you give her any money after the \$300 fund was created in cash, to Mrs. Kopp? A. I don't remember; I may have and I may not, I don't know.

Q. Now, you say that your father told you that the last money he got out of the sale of the real estate went to the Waters? A. Yes, sir.

Q. When did he tell you that? A. He told me at the time the flats were being built.

Q. Well, when was that? A. I don't know.

Q. How long before his death? A. I don't know.

Q. What is your best recollection as to how long it was before his death? A. I haven't any idea; I hadn't any idea when his death

was going to happen, or anything of the kind, and I was not keeping tally on it; I don't know.

Q. You saw the flats being built, did you? A. Yes, sir.

Q. When was it? A. No, sir, I didn't see that. I didn't know it until after it was finished; I didn't know anything about it until sometime afterwards some of the things was rented.

108 Q. Did he tell you he loaned to Waters or had given the Waters money out of the fund that he got from the sale of the real estate to go into these flats? A. Yes, sir, that is what he told me. He says "every nickle I got from the old lady" he says, "went to Waters for those flats." That is what he told me.

Q. You are sure about that? A. That is what he told me. And then he said that after my brother's death, whatever his insurance was, I could get—I don't know; I never did know, but, he says the money that Waters got, he says, from Ned's insurance put him on his feet. So whatever that money was I never did know; we didn't get nothing; Mrs. Waters got that too.

Q. So he must have told you that after his son's death? A. Yes, why sure.

Q. He told you about both the matters about the same time, didn't he? A. No.

Q. Which was first? A. He was speaking about the flat; he told me about the flat.

Q. How long did he tell you about the flat before he told you about your brother's insurance? A. Well, sometime afterwards.

Q. Was it a year? A. No, I don't think it was quite that time.

Q. You say you were on perfectly good terms with your
109 father? A. Yes, sir, I always was.

Q. Did you make any attempt to prevent his getting any money out of the proceeds of the real estate? A. No, sir; not any more than any of the rest of them did.

Q. Did the rest of them do it? A. I don't know.

Q. Well, you said "no more than the rest of them." What do you mean by that?

Mr. LAMBERT: This is objected to as not cross examination, and as irrelevant and immaterial, and not responsive to any issue involved in this case.

Q. (Continuing:) What do you mean by saying "not any more than the rest of them did," Mrs. Mulloy? A. Well, I don't know that any of them had any say in it, but still, from what I hear, he got more than any of the rest of them got, and what he did get he told me he gave over to the Waters.

Q. Well, now, the question is did you take any step individually, not speaking of anybody else, to try to prevent his getting that money, or any part of it?

Mr. LAMBERT: The same objection, and the further objection that any record in reference to the matter would be the best evidence.

Q. (Continuing:) Just answer the question. A. Well, I did object too.

Q. You did object. Didn't he know that you objected? A.

Why, certainly he knew that we objected.

110 Q. Wasn't your father the owner of some real estate outside of this Maryland Ave. lot? A. None that I know of, no, sir.

Q. You never knew of his owning any real estate? A. No, sir, and that didn't belong to him; that was Mamma's, and in some mistake, in some way, she left it to him; it was put in in his name; not that he ever worked for it or owned it.

Redirect examination.

By Mr. LAMBERT:

Q. Mrs. Mulloy, I will ask you whether or not you always stood ready to pay any share that would be required for you to pay with reference to this insurance?

Mr. WILLIAMSON: Objected to as immaterial, in view of the testimony of the witness.

A. Yes, I always paid my share; paid it right along; never had any objection to paying it.

By Mr. WILLIAMSON:

Q. Since December, 1906, have you ever offered to pay any of these premiums? A. 1906?

Q. Yes. A. Yes, I have offered to pay for them.

Q. Whom have you offered to—who did you make the offer to? A. Well, we was talking about keeping it up and I told them I was willing to pay my share.

Q. Told who? A. Told Mrs. Kopp when she came to the house to see if it was to be paid.

111 Q. Well, did you ever after that make any offer? A. And I was told that Mrs. Waters wanted us to drop it—give our consent to drop it, and she would continue paying it if we would drop it; that we could allow her to have the benefit and she was to pay us back what we had paid in, and I objected at the time.

Q. What is that, madam? A. I said I would see later about it.

Q. Then you never made any payments after that, is that the idea? A. No, I don't think I did.

Q. Now, did Mrs. Waters say that to you? A. She has often said it.

Q. Did she say it to you? A. Yes, sir, she did.

Q. Now when did she say that to you and where? A. I don't know when she said it.

Q. Where did she say it? A. She said it right in her own house.

Q. Who was there when she said it? A. Her husband was always there when she spoke of the insurance. He was the main one. He seemed to be the one that brought it up all the time.

Q. Oh, he made the proposition? A. He was the one who made the proposition. He said that he would pay it up. He said that he and his wife would see that it was paid up.

Q. Was that at his house? A. Yes, sir.

112 Q. And he and his wife were there? A. Yes, sir, they were there.

Q. Now, isn't it a fact that you said repeatedly that you would not pay another cent on account of this premium? A. No, I don't think so.

Q. Did you tell Mrs. Waters so and Mr. Waters so? A. No, sir, I did not.

By Mr. LAMBERT:

Q. Did you ever accept any such proposition as made by Mr. Waters and Mrs. Waters, that the matter should be taken over by them and they get the money? A. No, sir; I did not. That is where the falling out was; she brought this paper to the house for me to sign it, and on that condition I refused to sign it.

By Mr. WILLIAMSON:

Q. That was the paper after your father died that you are talking about now, isn't it? A. I know, certainly; she wanted me to sign the paper and I refused to sign it.

ANNIE MULLOY.

Subscribed before me this 7th day of June 1909.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon—

Mrs. HELEN SHEA, called as a witness on the part of the defendants, and being first duly sworn, was examined and testified as follows:

113 Direct examination.

By Mr. LAMBERT:

Q. Mrs. Shea, you are the wife, I believe, of Edward Shea, who was the son of Maria and John Shea? A. Yes, sir.

Q. I will ask you when you *when you* were married. A. July 7, 1902.

Q. When did your husband die? A. February 11, 1906.

Q. Did you and your husband have any children? A. One.

Q. What is his name? A. John Edward Shea.

Q. I will ask you if you knew Mr. John Shea, the father of your husband? A. Yes, sir.

Q. How well did you know him? A. Well, I have known him since I was about twelve years old, and I have known him for a number of years; I don't know exactly how long, but for a good many years.

Q. During the last two years of his life how often did you see him? A. Quite frequently.

Q. Once a month or once a week or what? A. Oftener than that.

Q. Where would you see him? A. At his home, 325 Maryland Ave., S. W.

Q. Who was he living with the last two years of his life?

114 A. Mr. and Mrs. Waters.

Q. Who composed the family there? A. Mr. Shea, Mr.

and Mrs. Waters, and Theresa Waters, and John Waters, in the last two years of his life.

Q. Did you know Maria Shea, the mother of your husband? A. Yes, sir.

Q. During the last two years of Mr. Shea's life, what was the condition of his health? A. Well, he was sick at one time, I think that was the latter part of 1906, I believe, or the early part of 1907, I can't say for sure.

Q. Do you remember when he was very badly sick? A. It was around Christmas.

Q. What year? A. Let me see. If you will just let me think a moment I can tell you exactly. 1907. It was either 1906 or 1907. I really could not say for sure; but I know it was around Christmas; it was in December.

Q. Now, do you know when he died? A. He died in July; I don't know the exact date.

Q. Of 1908? A. Yes.

Q. About how long before his death was it that he was so seriously sick, that you speak of? A. That may be a year; it may be two years. You see I really can't remember whether that was 1906 or 1907, but I know that it was around Christmas. I think it was 1907.

115 Q. 1907, that would be six months before he died. A. Oh, it must have been 1906, then.

Mr. WILLIAMSON: I object to this argument with the witness, because what is stated by counsel is suggestive.

Q. I will ask you to think about it now, to your best recollection, as near as you can recall, the fact being that he died in July, 1908. A. It is 1906, then, around Christmas. It was before Christmas, and after Christmas, because he was sick in bed after Christmas, because I know I was with him on the Christmas eve night; I sat up stairs with him for a while when some of the folks were out shopping.

Q. Do you know what was the matter with him? A. I think it was because he had been drinking.

Q. Did you ever see him under the influence of liquor? A. Yes, sir, quite frequently.

Q. How frequently? A. Well, really he drank most of the time until just before he died, more or less.

Q. Did you ever have any conversation with him during the last two years of his life with reference to Mr. and Mrs. Waters?

Mr. WILLIAMSON: Objected to as incompetent.

A. Not until in May or June, the year he died; you know he died in July and just before he was—I am quite sure that that was in June, because he was not feeling very well at the time, and I had a conversation with him then in reference to his will; he really
116 didn't mention the will, but I suppose that is what he meant.

Q. Where was this conversation? A. Right in the front yard of his home there; we were sitting on the front bench in the front yard.

Q. What was said?

Mr. WILLIAMSON: Objected to as immaterial and incompetent.

A. He said that—the baby was running about the yard, my baby, and he spoke of what a fine little fellow he was, and he told me that he hoped that the child would be treated better than he was treated at that house by those people when he grew up. He said “Of course, it is all right now”, that is, the baby, and then he started—told me that they did not like to see me come to the house to see the child; and I asked him why he hadn’t told me this before, and he said he really had never had a chance; and he said “I remember the baby, but,” he said, “I would do better by him,” he said, “and by my other children were it not for Mr. and Mrs. Waters”, for, he said, “if I don’t do as they want me to do I could not stay here.”

Q. Did he say anything to you about his insurance policy? A. No, sir, he didn’t mention insurance policy exactly.

Q. Now, what was his demeanor and actions when he was talking this way?

Mr. WILLIAMSON: Objected to as immaterial and incompetent.

117 A. Well, he acted as though he had not been treated just right.

Q. Did he say just what they had done to him?

Mr. WILLIAMSON: Objected to as leading and suggestive.

A. He said he had been disrespected; that his money was all gone.

Q. Now, what did he say about his money? A. Well, he said that they had bled him for the last dollar. That was the expression of his. Of course I want to tell you exactly as I remember. He said that they had bled him for the last dollar, and now that he had no money he was very much disrespected, so much so that he would eat in the kitchen; he said he would not eat at the table; and he had not been drinking when he was talking to me, because he had not had but five cents’ worth of beer, and I don’t see how that could make one who had drank so much intoxicated.

Q. Was anybody around on that occasion? A. Not a soul but the baby.

Q. Did you notice any action on his part? A. Yes, he kept looking in the house.

Mr. WILLIAMSON: Objected to as leading and suggestive.

A. (Continuing:) He kept looking in the house, and he said if any one saw him talking to me secretly like that they would be angry about it.

Q. Where was Mrs. Waters on that occasion, do you know?

118 A. She was away at the time in Alexandria.

Q. Where was Mr. Waters? A. At his work, I suppose; he was not at home.

Q. Do you know anything about Mr. or Mrs. Waters getting any insurance on your husband’s life?

Mr. WILLIAMSON: Objected to as immaterial.

A. Yes sir; Mrs. Waters got \$3090; I am quite sure that that is the exact amount.

Q. How was that policy taken out, do you know?

Mr. WILLIAMSON: Objected to as immaterial and calling for the contents of written documents.

A. Sir?

Q. By whom was that policy taken out? A. Well, I think there was two policies. There was one taken out by his mother, Mrs. Shea, and I think Mrs. Waters took out one herself. Both were in the Prudential; I am quite sure both were in the Prudential; one was \$2,000 and the other was \$1,090.

Q. Which was the \$2,000? A. The \$2,000 policy I am quite sure was the one that his mother took out. Of course I didn't see those papers, I don't know. Mrs. Waters had them.

Mr. WILLIAMSON: I move to strike out all the testimony of this witness as to the contents of these papers.

A. (Continuing:) I was there when it was paid, though.

Q. You were? A. Yes sir. I was right present in the dining room when the claim was paid.

119 Q. Who was it paid to? A. It was paid to Mrs. Waters.

Q. Do you know who paid the premiums on those policies? A. Mrs. Shea paid one of them until her death, and afterwards I think the sisters kept it up, and when they dropped it Mrs. Waters picked it up and paid it.

Q. Mrs. Waters held it at the time of—— A. (Interposing.) Of my husband's death.

Q. What was the occasion of your husband's death? A. He was asphyxiated.

Q. Where was he living at that time? A. At the home of Mr. and Mrs. Waters.

Q. Did Mr. Shea ever give you any money?

Mr. WILLIAMSON: Objected to as immaterial.

A. One time he did.

Q. State the occasion. A. In 1906 that was. Why, he told me that he was going to give me a little something at Christmas, about the 1st of July, and around Christmas time, the day before, Christmas Eve, he slipped me a \$2 bill, it was, and he told me particularly not to tell Mrs. Waters that he gave it to me.

Q. Did he say why he did not want you to tell Mrs. Waters? A. He said because they would be angry with him, and angry with me too.

Q. Did you have occasion to notice at any time the treatment of your father-in-law by Mr. or Mrs. Waters? A. Occasionally I did.

120 Q. Now, how did they treat him? A. Well, sometimes not as well as they might.

Q. Well, state what you mean by that. A. Well, I mean in showing him disrespect in a good many ways.

Q. Tell us in what way—did they ever order him to do anything?

Mr. WILLIAMSON: Objected to as leading and suggestive.

A. He seemed always to have to do just what they wanted him to do.

Mr. WILLIAMSON: I move to strike out the answer as incompetent.

Q. Did you ever hear them order him to do anything.

Mr. WILLIAMSON: Same objection.

A. Well, I really can't remember anything particularly.

Q. What would you say as to Mr. Shea, in your opinion, being under the influence, or undue influence in any way by Mr. and Mrs. Waters?

Mr. WILLIAMSON: Objected to as incompetent and immaterial.

A. I certainly think he was. I know that he was.

Mr. WILLIAMSON: I move to strike the answer out on the ground that the opinion of the witness is not of any consequence, unless she states the facts upon which it is based.

A. Well, the facts are——

Mr. WILLIAMSON (to the witness): Now, Mrs. Shea, I am not speaking to you now.

121 Q. Go ahead and state the facts. A. Because he told me if he didn't do as they wanted him to do he could not stay there.

Cross-examination.

By Mr. WILLIAMSON:

Q. In the last two years of Mr. Shea's life, about how often did you see him? A. Right frequently.

Q. Well, what do you mean by that? How many times a month?

A. Well, most every day.

Q. Most every day? A. Yes sir.

Q. Were you alone with him? A. Not always.

Q. Well, of course, you were not alone with him always, but were you ever alone with him? A. I was really never alone with him, only the time when he told me just what I mentioned there, about the baby, and he would do better by his other children were it not for the people he lived with there.

Q. Seeing him every day for two years before his death you were never alone with him but once. A. What I mean, is——

Q. Just answer me. Is that so? A. No, not altogether alone.

Q. Who was present? A. The children sometimes; a daughter or son, or some of the family.

122 Q. What time in the day would you see him—always at the same time? A. No, different times.

Q. Was Mrs. Waters always at home when you saw him? A. Yes, most of the time she was; very seldom away; if she was away the children were always there.

Q. Just confine yourself to Mrs. Waters. Only on one occasion in the last two years of Mr. Shea's life was Mrs. Waters away from

home when you were there, is that so? A. Oh, she was away from home on different occasions, but that was really the only time that we were alone at the house; that day there was no one there but Mr. Shea and the baby.

Q. When he was sick were you there in his room when there was nobody else there? A. No sir.

Q. So that only on one occasion in two years were you ever alone with Mr. Shea? A. I was there several times, that was just a few nights before he died; I was there alone one night. I stayed up with him one night all night.

Q. Now, when Mr. and Mrs. Waters were not there who was present? A. The children; either one of the children, Theresa or brother, the boy.

Q. Were not the children at school? A. No, not always.

123 Q. You would see him in the winter time, wouldn't you?

A. Yes, I usually saw him at night.

Q. And who would be present then? A. If Mr. and Mrs. Waters were not present the children would be present, either one of the children, or Alice, she is now Mrs. Smith; either one or the other of the girls.

Q. So in two years the only opportunity you ever had for a private conversation with Mr. Shea was the time that you told us about? A. Yes.

Q. That is true, is it? A. Yes sir, that is true.

Q. Did you ever see him on the street? A. Alone, no, I never did.

Q. Who was with him when you saw him on the street? A. I don't remember of ever seeing him on the street, because he was a man who very seldom went out. He went to the theater on two occasions with me and my little boy; but the boy, John Waters, was always along.

Q. You didn't see him on the street in the two years that you remember? A. No, I didn't see him on the street.

Q. Did you live in the same neighborhood? A. Yes sir.

Q. And in the summer time the furthestest away from the house you ever saw him away from it was sitting in front of it?

124 A. Sitting in front and sometimes, when I was at the house, he would walk as far as the corner.

Q. Well, you would be alone then, wouldn't you? A. No sir, he would be at the corner and I would be in the front yard.

Q. And he would walk to the corner with you? A. No sir.

Q. Now, are you on good terms with Mrs. Waters? A. Not at present.

Q. Not at present? A. I really haven't anything against Mrs. Waters, but she refused to let me see my child.

Q. That is your complaint against her? A. No, I haven't any complaint. I didn't mean that.

Q. Well, are you on good terms or not on good terms with her? A. I never had any words with her.

Q. I want you to be frank about it, Mrs. Shea, and tell me whether you are on good terms with her or not. You know what I mean A.

I haven't had any quarrel with her, and I don't feel anyways mean towards her at all; so, of course, I don't consider myself on bad terms with her.

Q. Do you visit her? A. Not at present.

Q. When did you stop visiting her? A. The last time was in September.

125 Q. Last year? A. Last September, the middle part of September.

Q. What is the reason that you stopped visiting her? A. Well, because I was insulted the last time I did visit her.

Q. She insulted you? A. Yes sir.

Q. And you naturally resented that? A. Certainly.

Q. And you haven't been there since? A. No sir.

Q. You say Mr. Shea was a hard drinker? A. Yes sir, he was.

Q. And the only time that you ever saw him sober was this time when you had this interview with him, when you were alone, is that true? A. Well, he had been drinking a little that day, but, to my knowledge, he hadn't had but five cents' worth of beer at the time we had the conversation; later on in the evening he had more beer.

Q. Was that the only time in two years when you saw him sober? A. I used to see him sober when he would first get up in the morning.

Q. Well, did you ever see him sober at night at any time? A. Well, no, I don't remember of seeing him when he was what you would call sober at night, only when he was sick.

126 Q. Well, did you ever see him when he was what you would call drunk? A. Many times.

Q. Well, was he drunk a majority of the times when you saw him? A. Yes sir.

Q. He was in no condition to talk to you then if you had been alone with him, was he? A. No, I think not.

Q. Was he sitting up or lying down? A. Sitting up sometimes and lying down at other times.

Q. You say he was sick in December about Christmas? A. Yes sir.

Q. And did he have the doctor attending him? A. Yes sir.

Q. You say he was sick from drinking? A. That is what I understood. He told me——

Q. You don't know that, do you? A. No. He told me himself that he knew it was the liquor that was the cause of him being sick.

Q. Well, who was present when he told you that? A. The little girl, Theresa Waters, was there at the time. He said he was going to stop drinking in maybe one or two days.

Q. How long was he sick on that occasion? A. A month or more.

127 Q. And when did his sickness commence—how long before Christmas? A. Well, I could not tell you exactly how long before Christmas; it may have been two years and it may have been three.

Q. When was the last time before Christmas in 1906 that he was unable on account of the sickness to be out of the house? You saw

him every day, now? A. Well I don't remember; I was not there to see anything, I don't know.

Q. No, but you were part of the day. A. No, I just visited there; I would be there probably an hour or two and sometimes three hours.

Q. Well, when towards Christmas of 1906 did you first find him in his bed and unable to be out? A. Two or three weeks before Christmas, to the best of my knowledge.

Q. And, to the best of your knowledge, he was not able to be out of the house two or three weeks before Christmas, 1906, and you are positive of that, are you? A. No, I did not say. I said to the best of my knowledge.

Q. You are not positive, then? A. I am not positive about the time he was taken sick.

Q. Now, are you positive whether it was 1906 or 1907? A. 1906.

Q. How do you fix that time? A. Well, I will tell you; 128 the baby was there at the time; the baby was born in July, and it was the Christmas after that that Mr. Shea was sick, because the baby was right small and he was there at the time.

Q. Now, you speak of the baby. That is your child? A. Yes, and is my child still.

Q. Let's see about that. After the child was born did you leave it with Mrs. Waters for about a year? A. Shall I answer that, Mr. Lambert? I don't see why I should be——

Mr. LAMBERT: I object to the question as immaterial and irrelevant, but you can suit yourself about answering. You need not answer it unless you want to.

A. What is that question?

Q. I asked you if you did not leave the baby there for a year after it was born with Mrs. Waters? A. I won't answer that.

Q. You won't answer that? A. No.

Q. And then didn't you in writing consent to its adoption by Mrs. Waters? A. I won't answer that either.

Q. There was a time when you were very friendly with Mrs. Waters, was there? A. Yes.

Q. Mr. Waters went on your bond over here in the Probate Court as administrator of your husband, did he? A. Yes.

Q. Didn't you send for Mrs. Waters when the child was nine days old and ask her to come and take it to her house?

129 Mr. LAMBERT: I object to that as irrelevant and immaterial.

A. I won't answer that question.

Q. And didn't you say at the same time that if Mrs. Waters didn't take the child you would put it in the orphan asylum?

Mr. LAMBERT: I object.

A. I won't answer that question.

Redirect examination.

By Mr. LAMBERT:

Q. What, if anything, do you know about your husband paying on the insurance policy involved in this suit? A. He left \$300 at one time, and then Mrs. Waters always got his check after his mother died, you know. She always received his check; his check always came in her envelope, and it was turned upside down for him to sign it, and when he would ask what has become of the check, why Mrs. Waters would say it was used towards expenses, taxes and insurance policy.

Q. What money are you speaking of?

Mr. WILLIAMSON: I object to all this testimony about the money, as incompetent and immaterial.

A. The rents of the house before the property was sold.

Q. Do you know anything about any property in Virginia that was left by Mrs. Shea?

Mr. WILLIAMSON: Objected to as immaterial, and the
130 witness can only know by hearsay.

A. There was some lots left there.

Q. Do you know what became of those? A. It was sold for taxes.

Q. Do you know who bought them? A. Well, I really don't know. I don't think I could talk to you intelligently on that subject, because I don't know exactly what it was.

Signature of witness waived by agreement of counsel.

J. ARTHUR LYNHAM, *Examiner*.

(An adjournment was taken until further notice.)

MONDAY, April 12, 1909—11.30 o'clock a. m.

Met, pursuant to agreement, at the office of Wilton J. Lambert, Esq., to resume the taking of testimony on the part of the defendant in the above entitled cause.

Present: Irving Williamson, Esq., solicitor for the complainant; Wilton J. Lambert and Rudolph H. Yeatman, Esqs., solicitors for the defendants, and Examiner.

Thereupon, Mrs. MARGARET KOPP, one of the defendants, and a witness in her own behalf, being first duly sworn, was examined and testified as follows:

131 Direct examination.

By Mr. LAMBERT:

Q. Mrs. Kopp, you are the Margaret Kopp named in this equity suit, No. 28147? A. Yes sir.

Q. You are the wife of Mr. Franz Kopp, and one of the daughters of John Shea and Maria Shea, were you? A. Yes sir.

Q. Where do you live now, Mrs. Kopp? A. No. 82 R northwest.

Q. When did your mother, Maria Shea, die? A. May 7, 1900.

Q. Did she leave any property? A. Yes sir.

Q. What did it consist of?

Mr. WILLIAMSON: Objected to as immaterial.

A. She left a considerable property; real estate.

Q. Your father was living at the time your mother died? A. Yes sir.

Q. Did your father ever own any property? A. My father owned a little property in his name; a few houses in his name at one time.

Q. What do you mean by "in his name?"

Mr. WILLIAMSON: Objected to as calling for matters of title which are not provable in this way, and as immaterial.

A. It was in his name for the reason that he would go bonds for people.

132 Q. Who owned that property? A. My mother owned it.

Mr. WILLIAMSON: I object to that as immaterial and as not a proper method of proof.

Q. Did your father ever have any income aside from what your mother would give him? A. No sir, none whatever.

Q. Did your father ever engage in any work? A. No sir, not that I ever knew.

Q. Take the time since 1881, can you remember back that far, from December 5, 1881? A. No, sir, no work whatever.

Q. When did your father die? A. July 12, 1908.

Q. Did your mother ever take out any insurance on your father's life? A. Yes sir.

Mr. WILLIAMSON: Objected to as calling for parol proof as to matters that are evidenced by writing, and also for a conclusion of law.

Q. What insurance did she ever take out upon his life? A. She insured his life in the Hartford Life Insurance Company for \$10,000.

Q. When? A. In 1881.

Q. Was that insurance ever changed in any way? A. Yes sir, I think it was changed to an assessment policy. It was not known at the time that it was to be an assessment policy, but it was
133 found out afterwards that it was.

Q. You mean there was an original policy taken out, and subsequently another form of policy was taken? A. Yes sir.

Q. Do you remember when the change in its form was made? A. The change, I think, was made in 1881.

Q. Well, then, had there been any insurance on his life prior to that? A. Yes, sir, insurance before that.

Q. Do you remember when the first policy was taken out by Mrs. Shea? A. I don't know the date, no sir.

Q. Who paid the premiums on the insurance policy that you have spoken of?

Mr. WILLIAMSON: Objected to as immaterial.

A. My mother always paid the premiums on them.

Q. Who was the beneficiary under the policy?

Mr. WILLIAMSON: Objected to because the policy speaks for itself.

A. My mother.

Q. Go on. Mother; anybody else? A. The children, yes sir.

Q. What children do you mean?

Mr. WILLIAMSON: That is objected to for the same reason.

A. Well, all the children who were living at the time.

Q. Now Mrs. Kopp, did you ever see your mother pay any of these premiums on the insurance policy you have referred to?

134 A. Yes sir, she—well, I usually paid them for her, or, in fact, any of the children she would send to the office to pay them.

Q. Send to the office where? A. To the express office; Adams Express.

Q. Were the premiums payable at the Adams Express office? A. Yes sir, always sent them there.

Q. You mean you sent the premiums through the Adams Express office? A. Through the Adams Express office, yes.

Q. Where did she send the premiums? A. To Hartford, Connecticut.

Q. You say that there were occasions when you paid them? I ask you what you can state about that—how often did you act for your mother in that connection? A. Well, I did most of the business for my mother. I attended to the real estate. I gave the receipts, and such as that, for rents that were paid on property, and in most of her business for her in that way; paying of bills and everything like that.

Q. Covering what period of years, now, would you say that you paid for your mother these insurance premiums? A. Well, I paid them after the death of my—

Q. I am speaking now of before her death? A. Well, I paid them almost every time they were due.

Q. Mrs. Kopp, when were you married? A. I was married in 1898.

Q. What is that? A. In 1898.

Q. Did you continue to perform these duties for your mother that you have spoken of after your marriage? A. Well, yes sir, because I lived at home until about a year after mother's death.

Q. Where was it that your mother lived and you lived with her? A. 325 Maryland Avenue, southwest.

Q. Did you ever hear your mother say anything about this insurance policy, or either one of these insurance policies?

Mr. WILLIAMSON: Objected to as calling for incompetent and immaterial evidence.

A. Yes sir, she wanted to impress it; she had told us repeatedly that she wanted us to keep that policy up because it was for our benefit.

Q. What do you mean by "our benefit?" A. The children's benefit; for the children's benefit.

Q. How often have you heard her express herself in this way?

Mr. WILLIAMSON: The same objection.

A. Oh, hundreds of time-.

Q. Did you ever hear her say anything about having taken the policy out herself, or who had taken it out? A. Yes sir.

136 Mr. WILLIAMSON: Same objection.

A. (Continuing:) I have heard her say that she took it out; she took it out herself.

Q. Did you ever know of your father paying anything on account of the premium on this policy? A. No sir; I never knew of him ever paying anything on it.

Q. After your mother's death where did your father reside? A. With Mrs. Waters, 325 Maryland Avenue.

Q. Up to when? A. Up to the time of his death, in 1908.

Q. What was the condition of your father's health, say the last two years of his life? A. Well, I would say that he did not have very good health, because he was sick every once in a while, and he drank a good deal, I know that; he drank to excess.

Q. How old was he when he died? A. 76 years old at the time of his death.

Q. Take the last two years of his life, how often did you see him? A. I saw him about three or four times a week.

Q. And what was his condition on those occasions? A. Well, I considered that he—nearly every time I went down there he had been drinking, he seemed very feeble and weak.

Q. When you say he had been drinking, to what extent? A. Well, he was sometimes very much under the influence of drink.

137 Q. Did he show any evidence of childishness, or anything of that kind?

Mr. WILLIAMSON: Objected to as leading and suggestive.

A. Well, he was very—I would consider feeble; he was always in a tremble, or something like that; I suppose that was his condition through old age.

Q. How did he appear to be mentally? A. Well; I didn't consider him very strong minded mentally, for the reason that he drank so much; I didn't think him capable of doing very much business or transacting any business under those conditions.

Q. Did he appear to be under the influence of anybody?

Mr. WILLIAMSON: That is objected to as suggestive and incompetent.

A. Very much so, under the influence of others.

Q. If you observed anything in connection with the influence of anybody upon him, why state what you observed and who it was.

A. Well, I know that when I would go down there and have a talk with him that he would begin to talking about himself, and sometimes—often he would cry to me, and when he heard or saw either

Mrs. Waters or any of the family coming in, he would change the conversation to something else; I thought that was influence.

Q. Did he show any evidence of fear of anybody?

Mr. WILLIAMSON: Objected to as leading and suggestive.

138 A. Yes sir; he did; it was fear, because he said he could not take a walk to the corner—go out of the house at all for fear of being watched; he said there was always somebody behind him watching him or following him.

Q. You say he complained of being in fear of being watched by them. Who do you mean by "them"? A. By Mr. and Mrs. Waters or the children.

Q. What children were there? A. Two children; Mrs. Waters had a son and daughter.

Q. How old were they? A. The girl was about 16 and the boy was about 15, I guess.

Q. Did he ever tell you anything about any conversation he had with Mr. and Mrs. Waters?

Mr. WILLIAMSON: Objected to because any statement by Mr. Shea is inadmissible.

A. He told me that he had loaned Mr. and Mrs. Waters \$500 towards the flats that they were building at the time on Maryland Avenue, and that they promised to give him a certain amount when it was finished, or out of the rents, and, he says, he had never received a dollar—a cent, he says, from them at all; and every time that he would ask one that one would refer him to the other, and in that way he didn't get anything from either of them.

Q. Did you ever know of his going out without being watched or followed by any of the Waters?

Mr. WILLIAMSON: Objected to as leading and suggestive.

A. Well, from just what he told me; he said he could never go out unless he was watched or followed.

139 Q. Did you ever have any conversation with your father in the presence of Mr. or Mrs. Waters when any suggestion was made about his going away for his health? A. My father spoke to me on that subject himself when he was ill. I went down to see him and he said he would like very much to go away for a short while for his health. And I told Mrs. Waters that her husband should send him away, because he had money—he owed him money; but he was never sent away.

Q. Tell us the circumstances and about the time and how this conversation took place. A. Well, I had been to see my father, and my sister Alice called me up by telephone one night about 11 o'clock and told me——

Mr. WILLIAMSON: I object to this as hearsay.

Q. Well, you received information from your sister Alice which made you to go there? A. Yes sir, and told me that my father was sick, and that Mr. and Mrs. Waters and her family had gone out

and he was there all alone, and she said he usually has a light burning in——

Mr. WILLIAMSON: I move to strike out all this testimony about this conversation.

Q. Don't state the conversation you had with your sister Alice, but in pursuance of some notice from her you went there? A. Yes sir, I went there, and my father was sitting in the front room, and he was a changed man entirely. Just as soon as I saw him I burst into tears, because he was so terribly swollen, and I told Mrs. 140 Waters I asked my father had he had a doctor, and he said no, and while we were talking my father cried and told me that he hadn't a cent; that he hadn't even any for his laundry; "I haven't money for my laundry or to go to the barber's," he said. And Mrs. Waters came in while we were talking, and I asked Mrs. Waters why she didn't send for a doctor, and Mrs. Waters didn't like the way I talked to her about it, and when I left there she was very angry. I saw her. And when I went a couple of days afterwards down there she would not allow me in the house to see him; and a doctor who was called in in the meantime ordered him to be put to bed.

Mr. WILLIAMSON: I object to anything that transpired between Mr. Shea and the doctor when this witness was not present.

Q. What doctor was called in? A. Dr. Poulton.

Q. Who called Dr. Poulton in? A. Mrs. Waters.

Q. Was anything said by Mrs. Waters about your father going away, or that he could go away, or anything of that kind? A. She said he could go away, yes; she said he could go away if he wanted to, but he turned and the look that he gave her would drive you through the floor, almost.

Q. Well, how did he look at her? A. Well, he looked at her as much as to say "you know you are saying that, but you know you don't mean it, and if I could why don't you send me." He 141 told me that he had asked them repeatedly for money, and if he had money he would go, of course.

Q. Well, on this occasion did he look at Mrs. Waters any particular length of time? A. Yes, he did.

Mr. WILLIAMSON: I object to any interpretation that this witness may put on Mr. Shea's looks as incompetent.

Q. How long did he look at Mrs. Waters? A. He looked at her fully a minute.

Q. About when was it that this conversation you spoke of occurred? A. Just about two weeks before his death.

Q. Did you see him any more after that. A. Yes sir.

Q. Did you have any difficulty seeing him? A. I went there at one time to see him and Mrs. Waters would not allow me in, and about a week after that her daughter called me by phone.

Mr. WILLIAMSON: Now I object to any conversation with her daughter.

A. (Continuing:) And told me that——

Mr. WILLIAMSON: Now, Mrs. Kopp——

Mr. LAMBERT: I claim that the daughter was the agent for Mrs. Waters.

Mr. WILLIAMSON: Well, you haven't shown that. I object to any statement by the daughter over the telephone as incompetent and hearsay.

Q. Go ahead, Mrs. Kopp. A. The daughter told me that
142 my father had been annointed for death; and I cried and says "I can't come to see him." She said "Yes, ma'm, and I called you up for that reason, to come and see him." And I got ready immediately and went down there.

Q. Did you see him? A. Yes sir; my father was in the bed.

Q. Did you see Mrs. Waters? A. After I had gotten in there; the door was unlocked and I went right on upstairs to see him, and Mrs. Waters came into the room a little while afterwards, and I was told afterwards that Mrs. Waters said I sneaked in there, but if she had been to the door I could not have gotten in.

Mr. WILLIAMSON: I move to strike out the statement of the witness that somebody told her what Mrs. Waters said.

Q. Did Mrs. Waters say anything to you on that occasion about sneaking in? A. No sir.

Q. Did she say anything at all to you? A. No sir.

Q. Did she speak to you? A. No sir.

Q. How did Mr. Shea, your father, act, in reference to being free and talking before Mr. and Mrs. Waters? A. He didn't—when Mr. and Mrs. Waters—when my father was all right in talking, but
143 when Mr. Waters had anything to say he would never talk it before my father; he would take his wife into another room and talk; and my father said it must have been acted as though it was private conversation; he never wanted him to know what was going on between them.

Q. That was not my question, Mrs. Kopp. My question was how did your father act in talking himself in the presence of Mr. and Mrs. Waters? A. He feared them. He never said anything when they were around, anything in reference to himself or his health, or anything else.

Q. Well, if he was talking and one or the other of them came in? A. If they came in he would change his conversation, yes sir; I mentioned that before.

Q. Did your father ever say anything to you in reference to having given or made over any of his property to Mr. Waters or Mrs. Waters? A. Mrs. Waters—well, Mrs. Waters told it herself.

Q. Go ahead. A. It was a mistake, though, in transferring the property. I was used as the third party. There was some property—a little property—part of it was in my father's name; part of it in my mother's name, and it was transferred from my father to my mother, and I was the third party, and in the transaction the lawyer overlooked one piece of property, and when the taxes came due this

tax paper was sent to my father, and he was very much surprised to know that it was sent him, because he made the
144 remark that he owned no property, and that it was a mistake, but he meant to have it fixed, but Mr. and Mrs. Waters took charge of it and met him out one day in the park, by arrangement, and had the property turned over to Mrs. Waters, and Mr. Williamson made the transfer at the time, and he was also acting for the family as trustee or administrator of the property—of the estate of my mother.

Mr. WILLIAMSON: I move to strike the answer out as not responsive to the question, as undertaking to give matters of evidence when the witness was not present.

Q. Did Mrs. Waters tell you about this transfer? A. Yes sir, Mrs. Waters told me that it had been done, and none of the family knew anything about it for sometime afterwards, until she told it.

Q. Do you know anything about any property being bought in at a tax sale by Mr. and Mrs. Waters that was owned by the estate? A. No sir; I don't remember.

Q. What, Mrs. Kopp, would you say, reference being had to all of your visits to your father, and your knowledge of him and conversations with him and observation of him, and also having regard to the specific acts you have enumerated, as to your father being mentally in a condition the last two years of his life to transact business or execute a valid deed or contract?

Mr. WILLIAMSON: Objected to because the witness has al-
145 ready testified on that subject.

A. I considered him very weak mentally, and he was failing rapidly in his health.

Q. Would you say he was or was not able to transact business?

A. He was not able to transact any business, for the reason, as I stated before, that he drank to excess, and considering his feeble condition.

Q. After the death of your mother a petition was filed in the District Supreme Court, was it not, for the appointment of trustees for the sale of your mother's property and distribution of the proceeds among the heirs? Do you remember about that? A. Yes sir.

Q. I am referring now to the case of Margaret Kopp and other—against John Shea and others, Equity 23513. Was disposition of the property had under that suit? A. Yes sir.

Q. Sale had of the real estate? A. Yes sir.

Q. Who were appointed trustees to make the sale, do you know?

A. I think Mr. Williamson and Mr. Lambert.

Q. Williamson and myself? A. Yes.

Q. You are familiar with your father's signature? A. Yes sir.

Q. I will ask you to look at what purports to be his signature to this photographic copy of this alleged assignment of
146 his insurance policy, of date the 21st of December, 1903, and tell me whether that looks in his usual handwriting? A. Very poor specimen of his handwriting when he is in his—when he is all right.

Q. What do you mean by "all right?" A. I mean that he was

certainly very much under the influence of drink when he put his name to this paper, because my father wrote a fine hand.

Q. Now, after your mother's death what was done in reference to the premiums on this insurance, prior to the sale of her property?

A. The heirs paid share and share alike from checks that they received from the estate for a couple of years, and then they decided to set aside a certain amount of money, each of them, to pay it, and they did so.

Q. Did Mrs. Waters participate in this arrangement? A. Yes sir.

Q. What was the understanding had then in this connection with reference to the proceeds of the policy when it should become payable?

Mr. WILLIAMSON: Objected to as hearsay.

A. Well, it was understood by all that they were to benefit by this policy as soon as the death of my father, and were able to benefit by it.

Q. Is that the reason you continued it? A. That is the reason all contributed, I suppose.

147 Q. Who made these payments under this arrangement that you speak of, where all were to contribute? A. I made most of them.

Q. Did you make them in the usual way, through the express company? A. Yes sir, through the express company.

Q. Who was in charge of the collecting of the rents of the property after the death of your mother, prior to this sale? A. Mr. Banes, and after that Mr. Davis.

Q. How would you get this money that you say was used to pay the insurance during that time? A. From the rents, you mean?

Q. Well, how did you get the money? A. Well, each of the heirs was sent a check from the estate, and they put in share and share alike towards the insurance.

Q. That continued up to the time of the sale of the property? A. Yes sir.

Q. Now, then, after the property had been sold, what, if any, arrangement was made between the heirs in reference to keeping up this arrangement of payments and prospective division of the policy? A. They each agreed to set aside \$300, and the premiums were paid from that.

Q. With whom was that \$300 to be set aside? A. It was left with you.

148 Q. Was any arrangement made with reference to having that \$300 remain with the proceeds of the property? A. Yes sir, it was agreed that Mr. Lambert and Mr. Williamson should hold it and I received the premiums from them when they were due.

Q. And what did you do with them? A. I sent them to Hartford.

Q. You said you sent them to Hartford? A. Yes, sir, through the express office.

Q. In this equity suit No. 23,513, Mrs. Kopp, I see your father was joined as one of the parties in reference to his courtesy interest in the estate, is that correct? A. Yes sir.

Q. Now, in connection with this arrangement that you speak of on the sale of the property by the trustees, when each one of the parties to the cause entered into this agreement to leave or deposit \$300 with the trustees to continue taking care of the premiums on this insurance policy, I will ask you whether any agreement was signed among them in writing. A. Yes sir, each signed an agreement.

Q. How many children did your mother leave? A. Six.

Q. Name them. A. Five girls and a boy. Mrs. Waters, Mrs. Jewell, Mrs. Mulloy, Mrs. Smith, Edward and myself.

Q. Now, between the time of your mother's death and the
149 time of your father's death, did any of them die? A. Yes sir, my brother Ned died in 1906.

Q. Did he leave any children? A. He left one son, yes sir.

Q. What is his name? A. Edward.

Q. About how old was he? A. Now?

Q. Yes. A. About two years old, I guess.

Q. Did he leave a widow? A. Yes, sir.

Q. What is her name? A. Helen.

Q. Are all the rest of the children living just as they were when your mother died? A. Yes sir.

Q. When was it your brother Edward died? A. February, 1906, at Mrs. Waters' house, of asphyxiation.

Q. Was he living with Mr. and Mrs. Waters at that time? A. Yes sir.

Q. Who was living with him there with Mr. and Mrs. Waters?

A. I think his wife was there at the time.

Q. Do you know or not? A. Sir.

Q. I say do you know that positively? A. No sir, I am not positive that she was.

150 Q. Did your brother Edward leave any insurance? A. My brother Ed was insured by Mrs. Waters, and then he had been insured by my mother.

Mr. WILLIAMSON: I object to any testimony about Edward Shea's policies, as immaterial.

Q. Were both policies in effect at the time of his death? A. Yes sir.

Q. What became of that insurance money? A. It was paid to Mrs. Waters, I presume.

Q. Do you know how much it was? A. No sir. I never knew the amount.

Q. You say after the sale of this property, instead of each one putting in a proportion from the rents, as they had done theretofore to pay this insurance premium, it was agreed that \$300 apiece should be left in the hands of the trustees? A. Yes sir.

Q. Was that done? A. Yes sir.

Q. You say there was a written agreement in reference to it? A. Yes sir.

Q. I will ask you to look at that paper and identify it and tell me what that is. A. Yes sir, I remember this agreement, Mr. Lambert.

Q. Are you familiar with the signatures of your brother and sisters and your father? A. Yes sir.

151 Q. I would ask you to look at those signatures, taking up the first signature, Alice Shea; is that her signature? A. Yes sir.

Q. What is her present name? A. Mrs. C. L. Smith.

Q. The next one is that of Elizabeth Jewell? A. Yes sir.

Q. And is that Mrs. Jewell's signature? A. Yes sir.

Q. The next is that of Annie Mulloy. A. Yes sir.

Q. Is that her signature? A. Yes sir.

Q. The next is that of Maria Waters. Is that her signature? A. Yes sir.

Q. And the next is that of your father, John Shea, is that his signature? A. Yes sir.

Q. And the next is that of Edward Shea. A. Yes sir.

Q. Is that his signature? A. Yes sir.

Q. How much money altogether was, under this agreement, turned over to the trustees for use in this way? A. Eighteen hundred dollars.

152 Mr. LAMBERT: I want this paper marked for identification and written into the record, but I don't want to file it. I will have it at the hearing, if that is agreeable to you, Mr. Williamson. I want it marked for identification and written into the record, and I don't want to file it, but I will have it at the trial.

Mr. WILLIAMSON: All right.

(The said paper referred to is here marked by the Examiner "For identification J. A. L., No. 1, J. Arthur Lynham, Examiner," and copied into the record, agreeably to the request of counsel, as follows:)

"Articles of Agreement.

"This Agreement, made this — day of December, A. D. 1903, by and between the undersigned, one with the other, as follows:

"Whereas, there exists a life insurance policy for the sum of ten thousand dollars (\$10,000) upon the life of John Shea, of the City of Washington, District of Columbia, father of the undersigned, which said policy has been issued by the Hartford Life Insurance Company of Hartford, Connecticut, upon the life of said John Shea, the same having been taken out during the lifetime of Maria Shea, who was formerly the wife of said John Shea, and the mother of the undersigned, which said policy was kept alive by the payments of premiums thereon by the said Maria Shea during her lifetime, but inasmuch as the proceeds from same, in case of the death of said John Shea, insured to the benefit of the children of said insured, the said premiums have, since the death of said Maria Shea,
153 been paid and the policy in this way kept alive and in full force and effect by the undersigned as heirs and children of the insured, each contributing his or her pro rata or proportionate share towards the payment of said premium out of the rents which have accrued from the property coming to them from Maria Shea, deceased; and

"Whereas, by proceedings in equity between the heirs and life tenant of said Maria Shea, the said real property has been apporportioned by sale, in equity cause number 23513, pending in the Supreme Court of the District of Columbia, by which said proceedings the revenue as rental from the said property to the undersigned, will necessarily cease, and they will each be entitled to their pro rata share of the proceeds from the sale of said property; and

"Whereas, said parties have all agreed between themselves that in order to continue in force and protect said insurance policy upon the life of said John Shea, to the end that they may collect and receive the proceeds on account of said policy from said company at the death of said insured, and shall individually receive such share as their respective interests as children may entitle them to from said proceeds, it has been agreed that a sum of money to the amount of Three Hundred dollars contributed from the proceeds of each of the undersigned pro rata, shall be placed in the hands of Margaret Kopp for the purpose of carrying into effect this arrangement and preserving said insurance policy in full force and effect and
154 insuring the distribution of the proceeds ultimately to the undersigned,

"Now, therefore, this agreement witnesseth, that in consideration of the premises and the sum of one dollar moving from each of the undersigned to the other, and for other good and valuable consideration, the undersigned agree, each with the other, to share equally the payment of premiums upon the life insurance policy issued by the Hartford Life Insurance Company aforesaid, upon the life of John Shea, during the natural life of said John Shea, and agree, each with the other, that they will share according to their respective interests therein, the proceeds from said insurance policy whenever the same may be payable, and for the purpose of fully and effectually carrying out this agreement, the undersigned further agree to place the sum of Three Hundred dollars in the hands of Margaret Kopp for the purpose of paying said premiums upon said insurance policy, and especially authorize and direct the trustees in said equity cause who held said fund, to deduct, pro rata from the shares of each of the undersigned in the proceeds of said sale, sufficient to make up said sum of — dollars, and we hereby authorize and direct them to pay said sum of money over to — in accordance with this agreement, taking his receipt therefor in full for said amount so deducted from each of their said shares; and it is further agreed between the undersigned that should said sum of money held as aforesaid by said Margaret Kopp for the payment of said premium become exhausted before the death of said John Shea, that each of
the undersigned will keep up the payment of said premium
155 thereafter or contribute thereto according to their respective interests therein, under penalty of a forfeiture of their right in sharing in the proceeds thereof should they fail to make said contribution.

"And said insured, John Shea, hereby approves the stipulations in the foregoing agreement and agrees with said parties, in consideration of their abiding by the same, to make no effort in any way

whatsoever to or attempt in any way, to change the character of said policy so as to affect the rights of said parties contributing to the payment of premium as aforesaid, to the full benefit of the value of said property, upon the death of said insured, as evidenced by his signature hereto.

"In witness whereof, the undersigned have hereunto set their hands and seals this —— day of ——, A. D. 1903.

Witnesses:

MARGARET KOPP.	[SEAL.]
ALICE SHEA.	[SEAL.]
ELIZABETH JEWELL.	[SEAL.]
ANNIE MULLOY.	[SEAL.]
MARIA WATERS.	[SEAL.]
JOHN SHEA.	[SEAL.]
EDWARD SHEA.	[SEAL.]”

By Mr. LAMBERT:

Q. Did you yourself see any of the signatures made to that
156 paper? A. Most of them yes sir.

Q. Did you see Mrs. Waters sign it? A. Yes sir, I did.

Q. I will ask you whether or not you continued to receive the money under that agreement from the trustees and pay the insurance premium? A. Yes sir.

Q. Did you sign that agreement to pay the money in and act under it on the conditions and agreements set forth therein, as between the parties in reference to sharing in the proceeds of that insurance? A. Yes sir.

Q. Was that fund that is spoken of there actually used in the payment of the above premiums coming due on that insurance policy? A. It was used, yes sir.

Q. Did you make the payments yourself? A. Most of them.

Q. Now, I will ask you after that fund was used, what occurred then? A. I was called on by Mr. Waters to contribute towards it, and I did.

Q. Towards it, what do you mean by that? A. Towards the insurance.

Q. Towards further premiums? A. Further premiums on my father's life insurance, yes sir.

Q. I show you a check and ask you what that is. A. That
157 is my share towards the premium on his insurance.

Q. Now, state the circumstances under which this check was given—how it came about. A. Well, Mr. Waters had promised me that he was going to go to some lawyer, and have the papers drawn up; after that money, the fund had given out, that he was going to have some papers drawn up that we would benefit by it. Well, after that money gave out Mr. Waters continued to call on me for more, and I told him I was not going to put in any more money unless it was drawn up by a lawyer that we would benefit by it after continuing paying in it, and he assured me that it would be done. He told me that after this payment was made, that it would be done; I need not fear, but I did fear him.

Q. Why did you fear him? A. I feared him through that piece of property, that transaction before, I considered that I was tricked in that, and I was afraid that I would be tricked again in this, and I wanted to be doubly sure that I would not be tricked, by having it drawn up by a lawyer.

Q. What piece of property do you mean? A. A piece of property that was transferred by Mr. Williamson. He made a transfer to Mrs. Waters——

Q. Now, after giving this check and making that payment what transpired as to any future payments—did you have any more conversations with Mr. Waters about it? A. No sir; Mr. Waters
158 assured me that it was going to be made out—fixed up by a lawyer; that there would be no more trouble about it.

Q. Did you offer to—— A. (Interposing.) I have always offered to pay my share.

Mr. WILLIAMSON: That is objected to as leading and suggestive.

A. (Continuing:) And Mr. Waters knew it.

Q. State what you did with reference to it. A. I told Mr. Waters that I was willing to pay my share always, if he would just have the papers drawn, and there would be no trouble after the death of my father.

Mr. LAMBERT: I offer the check referred to in evidence.

(And the same is filed by the Examiner and marked Defendant's Exhibit No. 1, and copied into the record, agreeably to the request of counsel, as follows:)

WASHINGTON, D. C., *Sept. 5, 1906.* No. —.

The Washington Loan & Trust Company.

Cash Capital \$1,000,000.

Pay to the Order of John O. Waters \$37.50 Thirty-seven 50/100 Dollars and charge the same to the account of Book No. — Life Ins. MRS. FRANZ KOPP."

(Endorsement on the back:) "John O. Waters."

159 By Mr. LAMBERT:

Q. This check of yours was of date September 5, 1906. When was the next payment falling due? A. December; it was paid quarterly.

Q. Did that payment that you speak of there of September 5th represent anybody else's interest therein except your own? A. Well, it was more—yes sir, it was more than my interest, because the premiums amounted to less than what the four amounts would have been, I think it was only four of us put in at that time, and there was six in the family then.

Q. Did you put in anything for Mrs. Mulloy? A. No sir.

Q. I mean was any part of that check including money that was to go in by Mrs. Mulloy? A. I don't know whether Mrs. Mulloy paid her share of it or not.

Q. Well, now, you say your check represented more than—— A. (Interposing.) Than my share, yes sir.

Q. Well, on what account was the difference paid? A. Just to make up the amount, that was all. I paid more than my share just to make up the amount of the premium that was due at the time.

Q. Now, in December, did you offer yourself willing to pay it? A. Yes, sir. I was perfectly willing to pay it.

Q. I notice that this assignment purports to be of the 160 month of December, 1906. Did you have any notice of Mr. Waters or Mrs. Waters intending to fix it that way? A. None whatever, sir.

Q. And would you have ever assented to any such arrangement? A. No sir.

Q. Did Mr. Waters or Mrs. Waters ever call on you for any more money? A. No sir.

Q. Did Mr. Waters or Mrs. Waters ever keep their promise in reference to having this paper drawn up in legal shape and continuing on? A. No sir.

Q. Did you request them to do it? A. I did.

Q. Did you ever try to get the papers made up yourself? A. I was willing to have them made up myself, but Mr. Waters said to leave it to him, that he would attend to it, and I did so.

Q. Did you ever consult counsel in reference to having papers made up? A. Yes sir, I did; I spoke to you about it.

Q. Did you ever request of Mr. Waters the policy so that the papers could be made out? A. Yes sir, but he—it was the hardest matter to get—he guarded that policy as if it were his own—on his own life. He claimed it was in a safe deposit vault and nobody had access to it but himself. You could not even get it at times to see how it read.

161 Q. Who had possession of this policy during the lifetime of Mrs. Shea, your mother. A. She had it, yes sir.

Q. Who had possession of it after her death? A. My father, I think.

Q. How did Mr. Waters get possession of it, if you know? A. No sir, I never knew how Mr. Waters got possession of it.

Q. In whose custody was it when you first saw it after your mother's death? A. My father's.

Q. In whose custody was it at the time you were keeping up these premiums? A. Which premium, before my father's death?

A. After the trustees had this money that they were turning over to you to pay premiums with. A. It was in Mr. Waters' custody.

Q. Do you know, as a fact, Mrs. Kopp, whether this policy ever was in Mr. Shea's possession? A. No sir, I could not say positively that it was.

Mr. WILLIAMSON: Well, now, I object on the record. Of course Mr. Lambert is entitled to consult with Mr. Kopp, but it is apparent that Mr. Kopp makes suggestions to Mr. Lambert in a tone of voice which the witness can hear, and I object to it.

Q. Did you ever see it in your father's possession? A. Right after the death of my mother it was in his possession.

162 Q. Who had your mother's papers and things at the time of her death—who took charge of them? A. My father.

Q. Do you know how this policy came to get into the possession of Mr. Waters? A. No sir. I do not. Mr. Waters had keys to father's desk.

Q. I notice in this bill, Mrs. Kopp, which was filed, it is alleged that Mrs. Jewell and Miss Alice Shea that was, now Mrs. Smith, have concurred in this arrangement and consented that Mr. Waters or Mrs. Waters shall have this policy and that this assignment be recognized. I ask you whether you had any conversation with either one of these parties in reference to that.

Mr. WILLIAMSON: I object to any statement of conversation with the parties as not binding the complainant in this case.

Q. Well, Mrs. Smith told me that she hadn't the money to fight this suit, and said that even so, she expected to benefit by it, anyhow, at my expense.

Mr. WILLIAMSON: I move to strike out the answer as incompetent.

Q. Was anything said by Mrs. Smith or Mrs. Jewell about having any arrangement with Mrs. Waters to get any of this money?

Mr. WILLIAMSON: Objected to as leading and suggestive and as incompetent.

A. Not that I know of, sir.

163 Q. Did you make any effort to get them all together in reference to this policy of insurance, and protecting it, after the exhaustion of this money which was in the hands of the trustees? A. No sir.

Q. Did you ever have any conversation with Mr. Waters in reference to his keeping up his part or any part? A. Mr. Waters told me that he could not keep it up himself.

Q. I will ask you to look at this paper, Mrs. Kopp, and tell me if that is your father's handwriting and his signature. A. Yes sir.

Q. That is, all excepting the signature of the witness and date line. A. Yes sir.

Mr. LAMBERT: I offer that in evidence.

(And the same is filed by the Examiner and marked Defendant's Exhibit No. 2, and copied into the record, agreeably to the request of counsel, as follows:)

'Messrs. Lambert and Williamson, Trustees.

GENTLEMEN: Please let me have, on account By any courtesy interest I may have in the proceeds of the Estate of Maria Shea the sum of # [1800]* the same to be paid without Prejudice to the con-

1400

[*Figures enclosed in brackets erased in copy.]

test concerning the amount allowed to me by the Auditor's report in said cause.

164

1100

Please pay my Daughter Alice # [1500]* the bal. to me.

JOHN SHEA.

Witness:

MARGARET KOPP.

Rec'd Feb'y 26th, 1904."

Mr. WILLIAMSON: I object to that as immaterial to the issues in this cause.

By Mr. LAMBERT:

Q. Now, Mrs. Kopp, taking up the time after this fund in the trustees' hands had been exhausted, and when you gave this check for the payment of part of the premiums to Mr. Waters, I will ask you whether or not, as a fact, you gave that check on the consideration of this promise of Mr. Waters to have the proper papers made out by a lawyer in reference to adjusting this insurance policy, so that all would share in it.

Mr. WILLIAMSON: That is objected to as leading and suggestive to the witness.

A. I did, and I also stated that before.

Q. You did state it? A. Yes sir.

Q. I will ask you, then, that question being objected to, upon what consideration or relation you gave that check—on what assurance, if any, of Mr. Waters.

Mr. WILLIAMSON: I object to that question, as the witness has already been informed by the previous question what she is expected to testify to.

165 A. That he would consult a lawyer and have the papers drawn up, to be made out satisfactory that we would all share alike in the policy.

Q. In these transactions who was Mr. Waters representing?

Mr. WILLIAMSON: Objected to because the witness can't possibly know about that.

Q. (Continuing:) Well, who acted for Mrs. Waters, if anybody, in these transactions? A. Mr. Waters always.

Q. I will ask you to look at that paper and tell me if you know in whose handwriting it is? A. It looks like Mr. Williamson's writing to me.

Q. Well, in whose handwriting are these signatures? A. Oh, my father's and Mrs. Waters'.

Mr. LAMBERT: I offer that paper in evidence.

(And the same is filed by the examiner and marked Defendant's Exhibit No. 3, and copied into the record agreeably to the request of counsel, as follows:)

[* Figures enclosed in brackets erased in copy.]

"Received of W. J. Lambert and Irving Williamson trustees in case of Kopp and others vs. Shea and others, the sum of \$248.84 in full of my share of proceeds of sale of part lots 9 and 10 Reservation C.

JOHN SHEA.
MARIA WATERS."

Mr. WILLIAMSON: I object to that as immaterial to the issues in this case, having no bearing thereon.

166 Cross-examination.

By Mr. WILLIAMSON:

Q. Mrs. Kopp, you spoke of some real estate which stood in your mother's name at the time of her death. That was originally bought out of the proceeds of the business, wasn't it, carried on? A. Yes sir.

Q. That business was carried on at least from 1881 until about 8 or 9 years before your mother's death, wasn't it? A. Yes sir.

Q. Was it carried on under your father's name? A. It was carried on under his name, but it was—everything was done by my mother.

Q. Did you ever see the license for that business? A. The license?

Q. Yes. A. Oh, I know that—

Q. Don't you know it was in his name? A. I know there was no license issued in a woman's name, I know that.

Q. My question is don't you know that they were all in his name? A. Yes sir.

Q. And she carried on the business, she being his wife? A. Yes sir.

Q. Now, didn't he hold all the property in his name? A. No sir.

167 Q. Originally? A. No sir.

Q. What piece of property stood in your mother's name,—tell me one piece of property that stood in your mother's name before he made the transfer? A. Oh, I thought you—she owned all of it, it was all in her name, with the—I don't know exactly what was in her name.

Q. Well, you don't understand me, Mrs. Kopp. There came a time when your father conveyed this property to you and you conveyed it to your mother, didn't you? A. Yes sir.

Q. Now, before that time all the property was in your father's name, wasn't it? A. No sir.

Q. Well, now, what pieces before that time were in your mother's name? A. I just said I could not tell you just what was in her name, but I know part of it was in her name.

Q. How many pieces were in your father's name? A. I could not say, sir.

Q. The great majority of it was in your father's name, wasn't it? A. No sir, I don't think so.

Q. You don't think so? A. No sir.

Q. Do you remember anything about it? A. I know that there was one piece in his name that was overlooked in the transaction.

Q. I am not asking you about that. You have told us what
168 you wanted to tell us about that. I am asking you about
something else. I am asking you about the number of
pieces that were in your father's name? A. I don't know. I told
you I didn't know how many there were.

Q. Do you know what time it was when your father conveyed it
to his wife? A. No sir, it is on record, though.

Q. I know. I am trying to test your recollection. A. I don't
remember.

Q. Was it 1898? A. I think it was previous to that.

Q. How long before that? A. I haven't any idea, sir.

Q. In the year 1906, how often did you go to see your father?
A. I went two or three times a week.

Q. Every week during the year? A. Well, before you take notes
of this I would like to ask a question first.

Q. Well, just answer my question. That is a plain question.
A. I want to know what year I went down South, that is all.

Q. Well, you can testify yourself. Just answer that question.
Did you go to see him every week three or four times a week during
the year 1906? A. Yes sir, I think so.

169 Q. You are certain of it? A. Yes sir.

Q. Did you see him always at night or ever in the day-
time? A. Sometimes at night; oftener in the daytime.

Q. Did you ever see him on the street during that year? A. No
sir, I don't remember it.

Q. Did you ever see him on the street at any time? A. No sir.

Q. When you would visit him in the daytime would you find
him in the house or outside the house? A. Sometimes in and some-
times outside the house.

Q. Was there during that period any attempt to keep you from
coming to the house, that you know of? A. I don't remember it,
sir.

Q. Was your father accustomed to going away in the summer
time? A. He went away a couple of times. It was not customary
though, for him to go away.

Q. How long did he stay when he was away, and where did he
then go? A. He was at Colonial Beach at one time.

Q. For how long? A. For a month; I think about that.

Q. Do you remember what year that was? A. That may have
been in 1906; in the summer of 1906.

Q. Do you know who was with him there, or whether he
170 was by himself? A. Well, there was always some of the
family going down there once in a while to see him.

Q. Were you down there at all? A. Yes sir.

Q. While he was there? A. Yes sir, I was down there while he
was there.

Q. And saw him there? A. Yes sir.

Q. Well, what member of the family was there when you were
there? A. I think the daughter was there.

Q. You are certain of that? A. She was there to make a visit
to see him. I don't mean to say that she stayed there all the time
that he was there.

Q. Was she there when you were there? A. Part of the time, yes sir.

Q. How long were you there? A. A couple of weeks.

Q. Do you remember how much money your father got out of the proceeds of the real estate? A. I know his share was larger than ours; I don't recall the amount that he got.

Q. You objected to his getting anything at all, didn't you? A. No sir.

Q. Didn't you file a paper—have a paper filed in court objecting to his being paid? A. Not anything at all.

171 Q. Well, didn't you want to diminish his amount? A.

Well, I didn't think him capable at the time of handling any great amount of money, because he was influenced by others, and I thought by that it would not benefit him much.

Q. Well, didn't you make the point that he was not entitled to as much as the Auditor of the Court had allowed him.

Mr. YEATMAN: Objected to on the ground that it is calling for hearsay evidence. The best evidence is to be found in the proceedings themselves.

A. Yes sir.

Q. Didn't he know that—didn't he know that you had filed your objection? A. I suppose he did.

Q. Didn't he have a policy on the life of your mother—your father had a policy on the life of your mother? A. Yes sir.

Q. Do you know how much that was? A. Two thousand dollars.

Q. Didn't he get that after her death? A. Did he get it?

Q. Yes. A. Yes sir.

Q. And did he keep a bank account anywhere? A. Did he?

Q. Yes. A. Yes sir, he kept a bank account.

172 Q. In the Washington Loan & Trust Company, didn't he?

A. Yes sir.

Q. Down to what time did he keep that? A. Well, he had one after the time of his wife's death.

Q. Haven't you got his book—didn't you get his book from the bank? A. No sir.

Q. Are you positive about that? A. Positive.

Q. You don't know what balance, if any, he had at the time of his death, do you, in bank? A. No sir.

Q. Did you have any money in your hands belonging to him at the time of his death? A. Yes sir.

Q. How much? A. About \$8.

Q. How much did you originally get from him, if you remember? A. Nineteen hundred dollars.

Q. And you paid it out to him as he required it? A. Yes sir.

Q. When was it that he told you he had loaned Mr. Waters \$500? A. When Mr. Waters was beginning the building of his flat on Maryland Avenue.

Q. Well, when was that, I want to know the year. A. 173 1905, I think.

Q. And when was it that he told you that Mr. Waters

hadn't paid him that back? A. He told me just a couple of months before his death that he never paid him anything.

Q. Was he sober when he told you that? A. Perfectly sober, yes sir.

Q. You haven't paid any more money on this insurance policy since that check of September 5, have you? A. No sir, but I was willing to pay it.

Q. Now, you have said all that before. Just confine yourself to my questions, please. Do you know who has paid it since then? A. No sir.

Q. On December 3d—the next payment, as I understand it, after September, would be December 21st? A. Yes sir.

Q. Now, on December 3d, 1906, didn't you have a conversation over the telephone with Mr. Waters about that policy? A. Yes sir.

Q. And didn't he ask you then to pay your share? A. Well, it shows that I paid my share by the check.

Q. No, but this was in December I am talking about. A. No sir. I had no conversation after that payment with Mr. Waters in reference to paying my share.

Q. Didn't he call you up on the telephone on the 3d of December, 1906, and tell you that the payment was due the next
174 day? A. No sir, that was——

Q. Now wait one minute, Mrs. Kopp. And ask you if you were going to contribute, and you said you were "never going to pay another damn cent," just in those words? A. No sir, no expression like that at all.

Q. Didn't you have a conversation with Mrs. Jewell at that time at her house and advise her not to pay any more on it? A. No sir.

Q. And didn't you give the same advice at that time to Mrs. Smith? A. No sir.

Q. Now, you have said that Mr. Waters was to have some papers prepared, and you would not pay anything until those papers were prepared. Didn't you know that this agreement that your counsel has offered in evidence, which was made in December, 1903 and signed by all the heirs, was in existence? A. Yes sir.

Q. Didn't you know that that provided just exactly for the situation after the funds were exhausted? A. Yes sir.

Q. What did you want any more papers then for? A. Well, I knew that the fund was exhausted, and I knew that they would require more money to keep it up.

Q. Don't you know that that paper provides for the heirs continuing to pay after the funds were exhausted, in express terms?

175 A. I don't remember the reading of that paper word for word right now.

Q. Don't you know that there was no necessity at all for any new paper; that this paper you have offered in evidence here provided for the situation?

Mr. YEATMAN: We object to that as calling for a conclusion of law.

Mr. WILLIAMSON: I am calling for her knowledge as to what was in the paper.

Mr. YEATMAN: You asked her if she knows that that was provided for. That is a matter of law.

A. (Question not answered.)

Q. You knew, Mrs. Kopp, that this paper was in existence, didn't you? A. Yes sir, I did.

Q. Now, as a matter of fact, did you ever offer after the date of that check, to pay any of this money? A. I was always willing to pay my share.

Q. When did you last do it and to whom? A. My last payment is shown by the check.

Q. Now, when did you last offer to pay anything? A. Whenever I was called upon to do it.

Q. When were you last called upon? A. Why, that check.

Q. That is the last time you were called upon? A. Yes sir.

Q. And that is the last time you have offered? A. Yes sir.

Q. Now, you said that there was some occasion that you
176 visited at Mr. Shea's, and was not that on the occasion of his last illness? A. I had been visiting him right along.

Q. No, but you said you went there and there was some trouble. A. Yes sir.

Q. That was in his last illness? A. That was before he was so very ill, yes sir.

Q. Yes, but he was then not very well? A. He was complaining, yes sir.

Q. Didn't you have some difficulty there on the occasion of that visit? A. Well, the difficulty was about me interfering by telling Mrs. Waters she should call in a doctor. Mrs. Waters didn't like the idea of me interfering by saying she should call in a doctor.

Q. Is that all that occurred, Mrs. Kopp? A. That is all that occurred, yes sir.

Q. You say that was the difficulty? A. That was the difficulty at that time.

Q. Well, didn't you attempt to throw a brick through the window? A. No sir.

Q. And become so disorderly and abusive that they complained that it was impossible for them to be in your presence? A. No sir, they were on the outside and I was on the outside; there was not any danger of that.

Q. Well, I know, but didn't you have a brick in your hand
177 to throw at the window? A. No sir.

Q. And were you not in a loud tone of voice calling Mr. and Mrs. Waters everything you could think of? A. No sir.

Redirect examination.

By Mr. LAMBERT:

Q. Why was it your mother took out a license in your father's name for that business, Mrs. Kopp? A. I think it was not customary for married people—of course I don't know anything about the law, but I just had an idea—if she could have gotten it in her own name I know she would have done so.

Mr. WILLIAMSON: I object to the answer and move that it be stricken out.

Q. Don't you know, as a matter of law, she could not get the license in her own name? A. Yes, sir, I think I understood it that way.

Q. You spoke about some property in your answers to some questions of Mr. Williamson's being in your father's name. How was it that any property was placed by your mother in your father's name?

Mr. WILLIAMSON: I object to that as immaterial and as calling for hearsay and conclusions and opinions.

A. Well, there was property put in his name because it was customary for saloon keepers at that time to go each other's bonds, and I think that was why it was put in my father's name, that he might act as bondsman at times.

Q. Then you spoke of it having been transferred back.
178 Was that the same property that you spoke of as having been transferred back? A. Yes sir.

Q. To your mother's name? A. Yes sir.

Q. Some of it, you say was not transferred back. How did that happen? A. That was a mistake from a lawyer.

Mr. WILLIAMSON: I object to that because it has all been gone over once.

A. (Continuing:) It was all overlooked.

Q. It was overlooked, was it? A. Yes sir, it was his mistake.

Q. And that is the property that Mrs. Waters got her father to convey to her, is it?

Mr. WILLIAMSON: Objected to as not responsive to the examination in chief, as leading and suggestive.

A. Yes sir.

Q. In answer to a question of Mr. Williamson's about some objection of yours to the money being paid over to your father for his courtesy interest in this real estate, in the partition suit, you stated that you thought he was not entitled to handle it on account of the influence of others. By that who did you mean—by "others"?

Mr. WILLIAMSON: Objected to as immaterial.

A. I mean Mr. and Mrs. Waters.

Q. By Mr. and Mrs. Waters? A. Yes sir.

Q. That was at the time he was living with Mr. and Mrs.
179 Waters, was it? A. Yes sir.

Q. Was that after this property had been obtained by Mrs. Waters from your father? A. Yes sir.

Q. Now, you have been asked whether or not you tendered your money to Mr. Waters after this check that was dated September, 1906. I will ask you whether or not at the time that you gave that check you said anything to Mr. Waters about being willing and ready to continue on but wanted these papers d-awn up? A. Yes sir; I told Mr. Waters I wanted these papers drawn up, and he as-

sured me that it would be done. He told me that with every payment.

Q. Did you tell him that you were willing to continue on the payments if it was put in proper legal shape? A. Yes sir. That was my remarks exactly.

MARGARET KOPP.

Subscribed before me this 13th day of May 1909.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon FRANZ KOPP, a witness called on the part of the defendants, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. LAMBERT:

Q. Mr. Kopp, you are the husband of Mrs. Kopp, I believe? A. Yes sir.

Q. You know Mr. and Mrs. Waters? A. Yes sir.

Q. When were you married to Mrs. Kopp?

Mr. WILLIAMSON: She stated that; why go over it again?

A. 1898.

Q. Do you know Mrs. Shea? A. Yes sir.

Q. How long did you know her? A. Twenty-four years.

Q. Did you know Mr. Shea? A. Yes sir.

Q. How long did you know him? A. The same time.

Q. Now, you have heard this insurance policy spoken of here. Do you know anything about when the first insurance policy was taken out on Mr. Shea's life? A. I don't know when it was taken out myself, but Mrs. Shea told me——

Mr. WILLIAMSON: Now wait one minute. I object to that. I just want to object to the witness volunteering anything.

Q. Well, what, if any, conversation, had you had with Mrs. Shea in regard to it?

Mr. WILLIAMSON: I object to any conversation between this witness and Mrs. Shea as hearsay and in no way affecting the subject matter of dispute?

181 A. Mrs. Shea told me she had taken a policy out before the policy she held at that time, and Mr. Shea, unbeknowns to her, had it changed to an assessment policy; that was in 1881, and thereafter the assessments began to come so hard on her.

Q. What was this business conducted by Mrs. Shea? A. She ran a grocery store and a saloon.

Q. Did you ever have any conversation about this insurance policy with Mrs. Shea in the presence of Mrs. Waters:

Mr. WILLIAMSON: I object to any conversation with Mrs. Shea, as immaterial and incompetent and hearsay.

A. In the presence of the whole family Mrs. Shea said that in case of her death that she wanted this kept up by us boys, and she was referring to the husband of each one of the daughters.

Q. Wanted what kept up? A. This insurance policy.

Q. For whose benefit, did she say?

Mr. WILLIAMSON: Objected to as leading and suggestive.

Q. (Continuing:) Why did she want it kept up? A. For the benefit of the children; her children. She said we will all benefit by it some day or another.

Q. Was Mrs. Waters present then? A. The whole family at times when she spoke of it often; used to dwell upon it.

Q. How often did you see Mr. Shea in the last two years
182 of his life? A. The last two years of his life, I guess about once a week.

Q. Where was he living at that time? A. 325 Maryland Avenue.

Q. With whom? A. Mrs. and Mr. Waters.

Q. Who else composed the family? A. His daughter and her son.

Q. What was Mr. Shea's condition physically during the last two years of his life? A. Mr. Shea was—he drank to excess, thereby he became mentally weak, and he was in no fit condition to conduct his own business. He was very easy led.

Q. Did you see him intoxicated during the last two years of his life? A. Every time I come down there; I have only seen him sober when he was sick.

Q. How would he act? A. Why, he would carry on just like a child would.

Q. Well, give us some illustration of it. A. Well, when Mr. Shea became under the influence of liquor, why he would just carry on, and he often drove us all out of the house, when I lived there. He cut Mrs. Smith on the arm with a pen knife; came very near cutting her arm off; and he used to drive Mrs. Waters around the house there with a broom.

Q. That was when you lived there? A. That is when I lived there.

Q. Now what was the treatment of Mr. and Mrs. Waters
183 towards Mr. Shea during the last two years of his life? A. Well, Mr. Shea, whenever I came down there, he would never talk to me much, only how the weather was, and so forth. He would never talk about the affairs in the house, because he was afraid to talk about it.

Q. Did you ever see him in the presence of Mr. and Mrs. Waters?

A. I did often.

Q. How would he act, say during the last two years of his life when you saw him in their presence? A. He would not have nothing to say to me.

Q. Would he talk before them at all? A. Well, what he would talk before those people wouldn't amount to much; just trifling things.

Q. Did you notice any evidence of fear on his part of either Mr. or Mrs. Waters? A. Why, Mr. Shea told me two weeks before he died, he stood at my automobile out in front of the house, 325 Mary-

land Avenue, that he would like to have a little money. He asked my wife for a little money; that he hadn't got a cent, and that he wasn't treated right, and that Mr. Waters had done him for everything he had.

Q. Was Mrs. Waters around at that time? A. No, Mrs. Waters was right at the door calling Mr. Shea so he would not talk to us longer. We came down that day with the intention of taking him out in the automobile, and they had taken him out themselves that evening, Mr. Jewell and Mr. Waters had taken him out so we
184 would not take him out. They were always in dread of us having a private conversation with him.

Q. Do you know anything about any money that Mr. or Mrs. Waters obtained from him in reference to some flats? A. Yes. Mr. Shea told me that he had loaned Mr. and Mrs. Waters \$500, and he expected to get some of the rent from the flat, and he said he had never got a button top.

Q. Do you know anything about Mr. or Mrs. Waters obtaining any property from him? A. From Mr. Shea?

Q. Yes. A. Yes, Mrs.—my wife was the third party. Mr. Shea transferred the property back to my wife, and my wife transferred it back to Mrs. Shea, and lawyer Cull was the attorney.

Q. Then what happened? A. Mrs. Shea told me that she had this property put in Mr. Shea's name.

Mr. WILLIAMSON: Now, one minute. I object to that as not responsive to the question and as a volunteered statement by the witness, and I called the attention of the court to it.

Q. Now, was there any mistake made in reference to the transfer of this property? A. Yes. In some way Mr. Shea was informed that he was back in taxes, and Mr. Shea said he didn't own the property at all; it was probably the man up in the next block
185 named Shea; but they informed him that the property was in his own name.

Mr. WILLIAMSON: Now, I object to this witness stating hearsay information and everything else.

A. (Continuing:) Mr. Shea told me this, that the property was in his own name.

Q. Go on. A. And right after that Mrs. Waters asked Mr. Shea—Mrs. Waters told the whole family right in my presence that she met him in the park; met Mr. Shea in the park and went up to Mr. Williamson's and had Mr. Williamson to sign the property over to Mrs. Waters; and Mr. Williamson at that time, being the lawyer for the administrator of the personal estate. Mr. Waggaman—Thomas Waggaman was the administrator, and that is how it come for the rest of the children to employ Lambert and Baker to take care of their interests. When Mr. and Mrs. Waters tricked my wife that way I advised her to take action the other way.

Q. What property was this that was conveyed? A. This is a piece of property containing two houses and a half a house on Maryland Avenue running back to an alley in the back, called Louise Alley or Louse Alley, having two small houses on it, and Mr. Waters con-

tinued on drawing the rent on a half of the houses, which goes to show it was a mistake, the transfer.

Mr. WILLIAMSON: I object to the argument by this witness as not responsive to any question, and invite the attention of the court to the fact, and that he has counsel.

A. (Continuing:) Mr. Waters drew half of the rent and
186 the estate drew the other half, or Mrs. Waters drew a half and the estate drew the other half of the whole house.

Q. Did Mrs. Waters continue to hold this property? A. Yes, she still holds it.

Q. Did she ever give it back to the heirs? A. Never did.

Q. Do you know anything about Mr. or Mrs. Waters buying any of this property of Mrs. Shea's at any tax sale? A. You mean tax certificates?

Q. Yes. A. Yes, that was the time that Mr. Waggaman was still the administrator, and Mr. Williamson was attorney for the administrator, and we done all our business through Mr. Williamson. Mr. Waters bought some tax certificates in for the property when Mr. Williamson, he was protecting our interests at that time. I went into Mr. Williamson's office and I informed him that Mr. Waters was buying the property up on tax certificates, and Mr. Williamson denied it, and I told him it was positively so, well, he said, "I would rather speak to a nigger than speak to you; so get out of here."

Q. Well, I don't care about those conversations. Was there any property actually purchased by Mr. Waters at a tax sale? A. Yes sir, he purchased a piece of property which the records will show, which you have.

Q. Do you know whether that was subsequently redeemed from him? A. Yes, it was redeemed in a statement that I re-
187 ceived, where it was redeemed from Mr. Waters.

Q. Can you say whether it was redeemed and taxes, interest and cost?

Mr. WILLIAMSON: I object. This witness can't possibly know; it is all a matter of record.

A. It was redeemed at tax sale; District tax sale.

Q. Now, do you know anything about this agreement that was made after the death of Mrs. Shea, or arrangement had prior to the sale of the property? A. No, only my wife said she had an agreement signed by all of them.

Mr. WILLIAMSON: I object to the answer.

A. In fact I saw the agreement.

Q. I am speaking of the agreement that was signed to have the trustees hold out this money. I am speaking of any arrangement after the death of Mrs. Shea among the heirs to pay this insurance money out of rents. A. No, only my wife assumed—why, in fact, all the children agreed to allow my wife to conduct her business for the immediate future, just the same as it was conducted by Mrs. Shea, and Mrs. Waters accused my wife of wanting to feather her

own nest, and that broke the whole arrangement up; just a verbal arrangement among the children.

Q. Now, there was an agreement entered into between the trustees and a certain amount of money put up. Do you know how much money was put up in that agreement?

Mr. WILLIAMSON: I object to that because nobody denies
188 it, and it is useless to consume time.

A. Which trustees? Say that over again.

Mr. LAMBERT: Well, if it is not disputed.

Mr. WILLIAMSON: I don't dispute it, Mr. Lambert, that they put up \$1800.

Mr. LAMBERT: Well, strike that out, then.

Q. Do you know anything about the circumstances under which this check was given by your wife September 5, 1906. A. Yes. After the money was exhausted, or she was informed that it was exhausted, Mr. Waters called her up and asked her if she was going to pay, and she said "yes, I will pay my check; I will send it to you."

Mr. WILLIAMSON: I object to this conversation over the telephone, which the witness could not possibly have heard, and he is testifying from hearsay.

A. (Continuing:) We had a phone in our own house at the time, and she said that if he would make the—have the thing made up so that all the children would benefit by it, why she would continue paying. Now, what made my wife leary about this thing, is that when Mrs. Shea died the insurance company sent down the assignment and told the heirs——

Mr. WILLIAMSON: I object to the testimony of this witness, this volunteer statement, giving the contents of papers which are not produced and not accounted for, and which are immaterial to the issues here.

Q. Was Mrs. Waters aware of this letter? A. Yes, that this assignment—this letter was wrote to the family, to Mr. Shea,
189 that this assignment—this was the last time he could assign it to anybody, and this assignment would not be made up; they would not have it made up so long as this money, the \$1800, was in the trustees' hands; and my wife knew that and she knew when the money was exhausted that unless this assignment was made right she would be tricked out of her money just the same as the heirs was tricked out of the piece of property that Mr. Shea held. So she wanted to hold Mrs. Waters down to some definite papers. So she paid this check with the understanding that he would have the things drawn up legally, which he never did.

Mr. WILLIAMSON: I move to strike out this argument of the witness, which is not testimony, and to call the attention of the court to it.

Q. Do you know where that letter is that was written by—— A. (Interposing.) I guess it is in Mr. Waters' possession.

Mr. WILLIAMSON: I move to strike out the guess of the witness, as not testimony.

A. (Continuing:) In fact, he has all the papers. My wife turned all those insurance papers and everything over to Mrs. Waters. He has them down there.

Mr. LAMBERT: In view of the objection which is made in reference to the contents of these letters, I wish to give notice on the record now to counsel on the other side that I call for all letters received by Mr. and Mrs. Waters, or by Mr. Williamson, as their attorney, or anybody else acting in this connection for them, or by John Shea, from the Hartford Insurance Company in reference to this policy, or matters leading up to it, in connection with the alleged assignment; said letters to be produced at the session of testimony to be taken in Hartford set for 10:30 on Saturday, the 17th of April, of which notice has already been given. And I further give notice that in the event of failure to produce the originals I shall offer secondary evidence of the contents of such letters at that hearing, or such subsequent hearing as may be had for the taking of testimony in this case; and I give notice that I have called for the originals of all letters sent by Mr. or Mrs. Waters, John Shea or Mr. Williamson, as their attorney, or anybody else acting in their behalf, in reference to this alleged assignment at the hearing mentioned. In event of failure of the originals to be produced I shall offer secondary evidence of such letters and communications at the time referred to.

Mr. WILLIAMSON: I am perfectly willing to produce any that I may have, but I decline to accept a notice like that, inasmuch as I can't possibly remember what is in it. If counsel wants to give me a written notice that I can understand he can do it; I can't understand those notes in shorthand.

Mr. LAMBERT: I will ask the Examiner to furnish you with a copy of that notice there.

By Mr. LAMBERT:

Q. Do you know whether that payment of September, 1906, included any additional amount for anybody else? A. Well, that payment of September 5 included one-fourth, or one part of one person's share that didn't pay. I think that was Mrs. Mulloy; she didn't pay her part in it.

Q. Why didn't she put her part in it? A. I don't know.

Q. What were Mrs. Mulloy's circumstances? A. Mrs. Mulloy is very poor. She has seven children and her husband just earns his day's wages.

Q. Do you know what the circumstances are of Mr. and Mrs. Waters?

Mr. WILLIAMSON: Objected to as immaterial.

A. They are right well to do; what I call in pretty good circumstances.

Q. Did you have any conversation with Mrs. Jewell or Mrs. Smith in reference to their attitude in this case?

Mr. WILLIAMSON: Objected to as immaterial and as hearsay.

A. Yes, Mrs. Jewell told me no later than last March—no, it was this March just past, that she didn't want to get in any enmity through her sister, and that she didn't want to spend any money in fighting this case, and that she—if Mag won, that she would get her share just the same.

Q. Who is Mag? A. My wife. In other words she would get her share at my wife's expense.

Q. Did she tell you anything about any arrangement or agreement that she had with Mrs. Waters? A. No.

Q. Did you ever have any conversation with Mr. or Mrs. 192 Waters with reference to this matter, or in their presence, about what Mrs. Jewell and Mrs. Smith were to receive? A. No; I have never talked with Mrs. Waters since.

Q. Within the last two years of his life, would you consider Mr. Shea was capable of transacting any business or executing a valid deed or contract? A. I would not.

Q. Why would you say that he was not? A. Because Mr. Shea was a very old man; he was 76 years old, a very old man; and a man who drinks to excess at the age Mr. Shea was, why he is in no fit condition to transact any business.

Q. Well, did you notice any effect of this on his mentality? A. Why, yes, he would act like a child. I hardly liked to speak to him at times, on account of his conversation would not be on any subject at all.

Q. Well, was it because of that and the general observation that you made of him that you say you don't think he could transact business or execute a valid deed of contract? A. I don't think he was in any fit condition to transact any business.

Cross-examination.

By Mr. WILLIAMSON:

Q. Take the year 1906, about how often per week did you 193 see Mr. Shea? A. I don't remember.

Q. Was he always drunk when you saw him? A. He was always drunk except right after a sickness, or when he was sick.

Q. Was he drunk at the time he stood out at the automobile and talked with you? A. He was so weak he couldn't drink.

Q. Answer my question. Was he drunk then? A. He was so weak he couldn't drink anything.

Q. Was he drunk then, Mr. Kopp? A. No, but he was in a very nervous state.

Q. Did you see him also at night. A. Sometimes in the night and sometimes in the day.

Q. Did you ever see him on the street in the last two years of his life? A. Out in front of his door.

Q. Never anywhere else? A. Yes, I had him in my automobile once.

Q. Only once? A. Just once, or twice, probable.

Q. Taking him out for a ride? A. Yes sir.

Q. Was he on good terms with you? A. Mr. Shea was always on good terms with me.

Q. Never had any trouble with you? A. No, only when he was drunk, he would chase us all out of the house.

Q. When is the last time he did that? A. A little before I moved out of the house.

194 Q. Do you know whether Mr. Shea ever went away from the house—did you ever see him away from the house in any other locality than in front of the house? A. No, only when he was with me in the machine.

Q. Your wife was his banker, wasn't she? A. She kept an account; a private account of his.

Q. He gave her about \$1900, didn't he? A. About.

Q. And whenever he wanted it she would pay it over to him? A. Yes sir.

Q. About how often did he call for it, if you know? A. I don't remember. I have a book with the dates in it every time he called.

Q. And she paid it over to him? A. Yes sir.

Q. Did he have an account, to your knowledge, himself in the bank? A. He told me he had.

Q. Did you ever see his bank book? A. No sir.

Q. Do you know what bank it was? A. The Washington Loan & Trust.

Q. He gave his daughter Alice \$1100, didn't he? A. Yes sir; order on the trustees.

Q. And she got that, as far as you know? A. Yes sir.

Q. Do you know anything about Mr. Shea going down to
195 Colonial Beach? A. Yes, I remember him being down.

Q. You didn't see him down there, did you? A. Yes sir.

Q. Were you there all the time he was there? A. No.

Q. How long a time did you spend there? A. About four hours; slept in bed with him.

Q. And how long did he stay at that time, do you know? A. I don't remember.

Q. How many years did he go down there? A. I don't remember.

Q. Wasn't he down there in the summer of 1906? A. I don't remember the date.

Q. Mrs. Waters told the family that her father had executed a deed to this piece of property to her, didn't she? A. Yes sir, I guess about a month afterwards. She said to her father—

Q. Well, now, one minute, Mr. Kopp. You can put in all the argument you want to make, but not at my expense. How long after Mrs. Shea's death was that? A. I guess that was the same year.

Q. Now, as I understand it, it was this way, the same year that Mrs. Shea died Mr. Shea made a deed to Mrs. Waters of this piece of property, is that right? A. Mr. Shea made a deed?

Q. Yes. A. I presume so.

Q. And Mrs. Waters told the family about it about a
196 month after the deed had been made? A. Yes, when both of them was drinking in the kitchen; that is how she came to let it slide out.

Q. Who do you mean by "both" were drinking in the kitchen?
A. Mrs. Waters and Mr. Shea.

Q. And who was present when she made that statement? A. My wife and myself and Mr. Mulloy and Mr. Mulloy.

Q. Was Mrs. Jewell there? A. No, Mrs. Jewell didn't live there.

Q. Miss Alice there? A. I don't remember.

Q. Why don't you remember whether Miss Alice was there, if all the rest of them were there? A. No sir, she was not with us at that time.

Q. She was not living in that house? A. She was not with us at that time. Mrs. Waters had Miss Alice under her influence. In other words, there was two factions in that house——

Q. Now, you are going to make a speech. A. Well, you have to go into a speech——

Q. Well, you are not going to make a speech in response to my question. I want to know how it is that you remember that Mr. Mulloy was there and Mrs. Mulloy was there and your wife and you, and you can't remember whether Miss Alice was there. A.

Well, because Miss Alice never drank as much as the rest of
197 us did, and we used to set in the kitchen there drinking.

Q. And you all used to drink, did you? A. Yes, we all used to drink, and we drank——

Q. Have you drank with Mr. Shea? A. Yes indeed.

Q. And what steps did you take, and your wife take about that conveyance, after Mrs. Waters, as you say, let out about it—what steps did you take about it? A. We talked to counsel about it.

Q. What steps did you take, any? A. Yes, Mrs. Kopp talked to counsel about it.

Q. Did you file any suit during the life of Mr. Shea? A. I don't remember.

Q. Don't you know that there was no suit filed? A. I don't think so.

FRANZ KOPP.

Subscribed before me this 13th day of May 1909.

J. ARTHUR LYNHAM,
Examiner.

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Testimony in Rebuttal.

Filed May 20, 1909.

In the Supreme Court of the District of Columbia.

In Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

MONDAY, April 26, 1909.—3 o'clock p. m.

Met, pursuant to notice, at the office of the Examiner, in the Columbian Building, to take testimony on the part of the complainant in rebuttal.

Present, Irving Williamson, Esq., solicitor for the complainant: Wilton J. Lambert and Rudolph H. Yeatman, Esq's solicitors for the defendants, and the examiner.

Whereupon—

Mr. LAMBERT: Before formally closing my testimony, I want to offer in evidence the records, or such parts of them as may be desired to be used in the partition suit, and in the will case, in the Probate Court in the hearing of this proceeding.

Mr. WILLIAMSON: I will reserve any objection I have to make until they are offered.

Thereupon—

WILLIAM E. POULTON, M. D., called as a witness on the part of the complainant in rebuttal, and being first duly sworn, was
199 examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. Doctor, how long have you been a practicing physician in the City of Washington? A. About 45 years. I have been practicing, I guess, going on 46; I was two years assistant surgeon in the Army during the Civil War.

Q. Did you know the late John Shea in his lifetime? A. Yes sir.

Q. Did you attend him professionally at any time? A. Yes sir, the past two years previous to his death; probably a little longer.

Q. You knew where he lived, did you, at 325 Maryland Avenue? A. Oh yes sir, known him for forty years.

Q. And how far away was your office? A. Well, about a couple of square-, I guess.

Q. Did you see him during the last two years of his life, at any other time except when you visited him professionally? A. Oh, I would casually meet him on the street.

Q. What was the character of your acquaintance—I mean were you well acquainted with him or simply casually acquainted with him. A. Casually.

Q. You have known him for how long? A. Oh, thirty
200 years; probably a little longer.

Q. Do you remember how many times you have visited him professionally in the last two or three years of his life? A. probably a half a dozen times.

Q. I think you said that you had seen him at other times, on the streets. A. No, I say I never attended him only in the last two or three years.

Q. I mean during the last two or three years of his life, independent of your professional visits to him, did you see him on the streets? A. Oh yes, would meet him.

Q. During your acquaintance with him, and the knowledge that you acquired while treating him professionally, will you state what was the condition of his mental faculties in the last two or three years of his life? A. As far as I know they were lucid and clear.

Q. Did you see anything in his nature or demeanor that led you to the opinion that his mental faculties were impaired? A. No sir; always seemed clear to me.

Cross-examination.

By Mr. LAMBERT:

Q. Did you ever see him otherwise than in the presence of Mrs. or Mr. Waters? A. Sir?

Q. Did you ever see him except in the presence of Mr. or
201 Mrs. Waters? A. Yes.

Q. Did you ever see him by himself? A. Yes.

Q. How often have you seen him by himself? A. Oh, I don't know. Well, I have seen him every few days.

Q. What was he suffering from? A. What do you mean, the last illness.

Q. Yes. A. With kidney and liver trouble.

Q. What was he suffering from the last two years of his life? A. I attended him, I think—I know I attended him for stomach trouble.

Q. When did he begin to have kidney trouble? A. Well, probably about six months before.

Q. When did he begin to have liver trouble? A. Probably about the same time.

Q. Both started at the same time? A. I can't say they both started at the same time; near about that.

Q. Never had any kidney or liver trouble until the last six months of his life? A. Not that I know of; not while I attended him.

Q. Well, did you ever make any examination to find out? A. What do you mean, of the urine?

Q. Yes. A. No.

202 Q. Never did? A. No.

Q. Never examined his urine at any time have you? A. Yes at one time, yes.

Q. When was the first time? A. Well that was probably about the—I examined his urine about a day or two after he was taken sick last.

Q. And that was about six months before he died? A. No, no; before his last illness, I am speaking of.

Q. That is the first time you examined his urine? A. Yes.

Q. How did you know whether he had kidney trouble before that or not, then? A. Because from the symptoms, such as pain in the back.

Q. When you suspicion kidney trouble, is not the first thing an examination of the urine? A. Sometimes they have a nephritis and occasionally complication of the kidneys, and different things; that oftentimes passes off.

Q. I know, but isn't it the way to tell to examine the urine, as soon as you have any suspicion as to kidney trouble? A. Not unless you suspicion that there was some chronic trouble; some serious trouble with the kidneys; you don't always.

Q. How are you going to tell whether it is nephritis or chronic trouble, unless you examine the urine? A. By the pain in
203 the back, and sometimes in his urine, by his passing of the urine.

Q. You didn't think it was necessary, then, until the last illness, to examine his urine? A. No I did not.

Q. What did you find? A. Well, I found albumen in it.

Q. You found he had a pretty bad case of kidney trouble, didn't you? A. He had a very acute Bright's disease.

Q. You found he had a very bad case of kidney trouble didn't you? A. Yes.

Q. That is a very poisonous uremic disease, isn't it? A. Yes, supposed to be.

Q. The poison creates a toxic condition, doesn't it? A. Yes, because of albumen in the urine.

Q. And that condition permeates the whole system, doesn't it? A. Yes, permeates the system.

Q. Goes to the brain as well as the body? A. Yes.

Q. People frequently go entirely out of their minds with that toxic poison, don't they? A. Yes.

Q. What was the trouble with his liver? A. He had congestion of the liver.

204 Q. Is that what they call cirrhosis of the liver? A. Well, sort of a hardening of the liver.

Q. What does that come from? A. Comes from most anything.

A. What does it usually come from? A. His liver is very apt to be cirrlosed from sedentary life; the life which a man lives will produce that.

Q. Doesn't it very often come from excessive use of intoxicating liquor? A. It might, but because a man has cirrhosis of the liver is no reason why he should be addicted to the use of alcoholic liquors.

Q. But if a man is known to be a heavy drinker and gets cirrhosis of the liver, you would naturally — that that is what it comes from? A. If he is an habitual drinker, well naturally they would.

Q. What do you call an "habitual drinker?" A. Why, a man who drinks all the time; a drinking man, an habitual drinker.

Q. An habitual drinker? A. Yes, but a man may have cirrhosis of the liver from Bright's disease, at the same time it doesn't follow it must be from alcoholic liquors.

Q. Does Bright's disease come from intoxicating liquor? A. It might; a person who was a constant drinker for years and years, it might produce that.

Q. Necesarily produces it? A. Oh no, not necessarily.
205 He might have it anyway, but because he drinks there is no reason why he should have those diseases, because it comes from other causes that we can not explain.

Q. But they never have Bright's disease without it is because of that toxinous poison, do they? A. No; you have got to have the albumen.

Q. You have got to have acids there too? A. Yes, uric acid.

Q. Uric acid is one of the most poisonous acids, isn't it? A. Yes.

Q. What poison is usually found with cirrhosis of the liver? A. That is more of a uric acid.

Q. Some general kind of acid? A. Yes, pretty much the same that circulates through the system, you know; taken up and carried through the circulatory system.

Q. Those acids are extremely harmful to the physical and mental condition of a human being, are they not? A. Yes.

Q. People get acute mania from that Brights disease, don't they? A. Oh yes, very often. That is an erroneous idea people have—a person having cirrhosis of the liver and Brights disease, that it comes all from drink.

Q. I am very glad to hear it. A. Yes, an exploded idea.
206 It is an erroneous one. It does not always follow.

Q. You also are the physician for Mr. Waters, are you not? A. I attend his family occasionally, yes sir.

Q. You were attending them before the death of Mr. Shea? A. Oh, yes.

Q. And you have attended them since? A. Yes sir.

Q. You are what is known as their family physician? A. I don't know; I suppose so. You know you can't depend on people. Sometimes they want one doctor on one day and another one on another, the same as the legal profession; come around to you to try one case and the next month come around and get somebody else.

Redirect examination.

By Mr. WILLIAMSON:

Q. Did you see in Mr. Shea's condition any evidence of mental unsoundness by reason of Brights disease, or any other disease? A. No sir, I did not.

Recross-examination.

By Mr. LAMBERT:

Q. Doctor, you knew Mr. Shea was quite a drinking man, didn't you? A. I never saw him under the influence of liquor in my life, sir.

207 Q. And you used to tell him not to drink, didn't you? A. Yes, I told him not to drink.

Q. Why did you tell him not to drink? A. On account of the condition he was in. I asked him did he drink much and he said occasionally he taken a glass or two of beer. I said "Why, you just leave that off and take milk in place of it."

W. E. POULTON, M. D.

Subscribed before me this 17th day of May 1909.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon—

Mrs. ELIZABETH JEWELL, called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMS:

Q. You are one of the daughters of the late John Shea and Maria Shea? A. Yes sir.

208 Q. Taking the last few years of your father's life, tell us how often you saw him? A. Well, I saw him about a couple of times during the month. I didn't go down as often—of course I was not living there; a couple of times each month.

Q. Did you see him anywhere else except at his residence? A. The last few years, you say?

Q. Yes. A. No.

Q. Did he visit you at all? A. Not in the last few years, no.

Q. When you saw your father at his residence, during the last few years of his life, what was the condition of his mind, as far as you observed. A. Well, as good as mine.

Mr. LAMBERT: That question and answer are objected to, and a motion made to strike them out, on the ground that the witness has not qualified to give an opinion.

Q. When you saw him, Mrs. Jewell, would you talk with him? A. Yes, of course I talked with him.

Q. You say you saw him as often probably as twice a month? A. Twice or three times a month.

Q. And talked with him on each occasion? A. Yes sir.

209 Q. From the conversations you had with him on those occasions and from your observations of his demeanor, tell us whether, in your opinion, he was of sound or unsound mind?

Mr. LAMBERT: Same objection, and the further objection that she is a lay witness and can't express this opinion.

A. He was all right; he was of sound mind.

Q. State whether he talked with you rationally or irrationally? A. He talked rationally every time.

Mr. LAMBERT: Same objection and same notice.

Q. Did you see any difference in his mental condition between the time you saw him during the last few years of his life and the previous years of his life? A. No, not in his mind; no, I didn't.

Q. Now, when you saw him on these occasions, what have you to say about his being under the influence of liquor or otherwise? A. Well, I will say that he was not drunk. My father drank a glass of beer, the same as any other man, but he was not drunk.

Q. It is in testimony here, Mrs. Jewell, that a fund of \$300 from each of the six children was set apart out of the sale of certain real estate. Now, when that fund was exhausted did you have any talk with Mrs. Kopp with reference to future payments? A. Yes, Mrs.

Kopp called me up over the 'phone. First her husband called up and then she talked afterwards. She asked if I intended to keep the payments up and I told her that I didn't feel able to do it. I asked her if she was, and she said "no, emphatically not." And
210 then she said that she had gotten from good authority, that we would derive benefits just the same as those that was keeping them up, and she was not going to, she said, and I said "I am in doubt whether to do it or not," and she said she was not, and I said, "Well I won't."

Q. Well, did you pay anything after the September, 1906 payment? A. No, I think that was the last payment, as well as I can remember, Mr. Williamson; I think that was the last one.

Q. Mr. Kopp has testified that last March he had a conversation with you in which you told him that you had no money to go into this case, and that if Mag, meaning his wife, won out, that you would get the same, and that you would let it go at that, or words to that effect. What have you to say about that conversation? A. Well, since then, Mr. Williamson, I called Mr. Kopp up. I heard that Mrs. Waters told me that, and he denied it. He denied that he had said that. He said just exactly—he told me that he had said what I really did say.

Q. Well, what did you really say? A. I said to him—at least I didn't say then—I had told my sister—I can't remember; of course it was——

Mr. LAMBERT: All this conversation is objected to.

Q. Don't tell us what you told your sister, but confine yourself to the conversations you had with Mr. Kopp. A. Well, I told
211 him that I didn't want to have any enmity, and I didn't care to enter any suit at all; and that was all I said. I told him that you had brought this suit, and I didn't want to have any trouble at all. I didn't say anything about not putting any money in at all, because if I wanted to I could have fought the case as well as him, or any one of them. I have as much as he has. He denied it; said he didn't say anything of the kind, about not having any money.

Q. As far as you were able to see on the occasions of your visits to your father, in the last few years of his life, was there any watching of him done by anybody? A. No, not that I know of.

Q. Did you ever hear of such a thing as that? A. No sir, never.

Q. Did you ever see any evidence of it? A. No, I did not.

Q. State whether your father so far as his mental characteristics were concerned, was a man who did what he pleased, or what other people wanted him to? A. He certainly did just as he pleased all of his life, as long as I can remember him. As long as I can remember him he had his own way, too, every time.

Cross-examination.

By Mr. LAMBERT:

Q. Mrs. Jewell, how often did you see your father the last two years of his life? A. Oh, twice or three times a month.

212 Q. Where would you see him? A. Oh, down to the house.

Q. What house? A. Mrs. Water's house.

Q. Where he was living? A. Yes, where he was living.

Q. Now, after the fund that you have spoken of here this \$300 a piece that you put up, had been exhausted, did you have any conversation with anybody else beside Mrs. Kopp about keeping it up? A. No, not that I can remember, Mr. Lambert.

Q. You didn't have any conversation with Mrs. Waters? A. Mrs. Waters, no.

Q. Mr. Waters? A. I did, yes; I remember I did. Mr. Waters called me up. He called me up and asked me over the 'phone—that's right—he asked me the same time; that's right, he did.

Q. Didn't you come down to my office to talk it over? A. Did I? I don't remember; I may have; I don't know; I have forgotten; I don't remember.

Q. Don't you remember coming down about December, 1906, with Mrs. Kopp, to my office, with reference to this very insurance policy, and keeping up payments? A. I don't remember, Mr. Lambert. I can't remember; that is a positive fact; I can't remember.

Q. And don't you remember that the matter was discussed in connection with keeping up payments, and that I asked you to bring the policy down, or to get the policy and bring it down to my
213 office, or a copy of it, so that I could see what the terms and conditions were? you and Mrs. Kopp together? A. No, I don't remember that at all, Mr. Lambert: no sir, I don't. I don't see how you could have said that to me, because I didn't have the say down in the house as the others did; I didn't go down there; I don't remember that at all.

Q. Do you remember in this conversation that you had with Mr. Kopp when this litigation started, that you told him it would not make any difference; that you would expect the same if Mrs. Kopp won as the rest of them would get, and if it went the other way, why Mrs. Waters would adjust the matter with you? A. No sir; you are left there. I never said anything of the kind, no sir.

Q. You never told him any part of that? A. Yes sir, I told him the first part of it. Yes, I acknowledge it. I said if he won out—that is where I tried to get that in and Mr. Williamson told me—you won't let me tell that. He said to me in March—I went over to his house; and of course you won't let me tell that. His wife was ill and she sent for me, and it was then that he brought that conversation up, that I had sent to my sister Annie, and he said he had heard it, and I said yes, she was very foolish to enter the suit, because, I says, if you won out, I says, it would be perfectly natural that we would receive the same benefit, and that was all that was said at his house, and he brought the subject up.

214 Q. You signed a paper in connection with this matter after your father's death, for Mr. Waters, didn't you? A.

Yes.

Q. What was that? A. Well, I think——

Mr. WILLIAMSON: I object to the contents of any written paper. What paper do you refer to, her answer?

Mr. LAMBERT: The paper she signed for Mrs. Waters.

Mr. WILLIAMSON: There is no paper signed but the answer.

Mr. LAMBERT: Well, I am asking her now.

Mr. WILLIAMSON: I object to calling for the contents of any written paper?

Q. Have you that paper? A. Have I, no.

Q. Do you know where it is? A. I judge Mr. Williamson has it. Some one has it. No, I haven't it. Of course not. It would not be in my possession, Mr. Lambert. I don't see why you should ask me that question.

Q. What was the occasion of your signing that paper?

Mr. WILLIAMSON: I object to this because the only paper signed by the witness in her answer on file in this case which speaks for itself.

Q. (Continuing:) Go ahead. What was the occasion of signing that paper?

Mr. WILLIAMSON: I object to that for the reason that the occasion for signing the paper is that she was a defendant to the bill.

215 Q. (Continuing:) How did you come to sign that paper?

A. How did I come to sign it?

Q. Yes. A. Why, I was asked to sign it. I read it over and they asked me, and I thought the contents was right, and I signed it.

Q. What was that paper?

Mr. WILLIAMSON: I object to that and I direct the witness not to answer it, because it is calling for the contents of a written paper, and I have already told counsel that the paper referred to is the answer filed in this case.

Mr. LAMBERT: I want to know if the witness knows what paper it was.

A. Yes, I know what it was.

Q. What was it? A. Shall I answer Mr. Williamson?

Mr. WILLIAMSON (To the witness): You answer for yourself, Mrs. Jewell. I instruct you not to undertake to give the contents of any written paper.

A. Well, I signed the paper simply because I thought it was right.

Q. Well, what was that paper? Was it a contract or what? A. No, no contract.

Q. What was it—what would you call it? A. Well, I don't know what you call it. I don't know what you call it at all. I know I signed it, and otherwise, if it had not been right, I would not
216 have affixed my name to it.

Q. Who got you to sign it? A. Who got me to sign it?

Q. Yes. A. Mr. Waters and Mrs. Waters asked me to come down to look this paper over; didn't ask me to sign it at all.

Q. Can't you tell us what the paper was? A. Certainly, I could tell what it was.

Q. Well, tell me what it was. A. I could not tell you what the paper was unless I told you what the contents was. I know what the contents was.

Q. I show you a paper and ask you if that is it. A. That was it. There is my signature (indicating).

Q. Is that the only paper you signed? A. No, I think I have signed one since.

Q. What was that? A. Well, it was—well, I will have to tell you the contents of that too. It was about my father—his mind, I think. That is the only one I remember of ever signing. No, not any other one that I know of.

Q. Who prepared this paper? A. I don't know. I suppose Mr. Mr. Williamson did.

Q. Was he your attorney in this matter? A. Mine?

Q. Yes. A. No.

Q. Who brought this paper to you—did Mr. Williamson
217 bring it to you? A. No.

Q. Mr. Waters? A. No.

Q. Mrs. Waters? A. No.

Q. How did you get it? A. I went down there at the house.

Q. They sent for you, did they? A. Yes.

Q. And they had this paper there when you went there? A. Yes.

Q. And Mr. and Mrs. Waters requested you to sign it, did they?

A. They asked me to read it; they didn't ask me to sign it at all.

Q. How did you come to sign it, then? A. Well, because I thought it was correct, that is why I signed it.

Q. How do you know they wanted you to sign it, then? A. I went down there. They didn't ask me to come and sign it. They told me to come down there and look this paper over.

Q. For what purpose? A. Well, to see if it was all right. I suppose they wanted me to sign it, but they didn't ask me then?

Q. How did you come to sign it then? A. Because I thought it was all right, that's why.

Q. How did you know it was necessary to sign it? A. I
218 don't think I could possibly answer that question.

Q. Who suggested your signing it? A. Who suggested it—no one at all.

Q. You just signed it without knowing why you signed it? A. Oh, I knew what I was signing, Mr. Lambert, of course.

Q. You knew why you were signing it, did you? A. Yes.

Q. Why? A. Because I thought it was correct. That is all. That is the only answer I can give you. I agreed with them.

Q. You took one of those papers like this up to Mrs. Mulloy to sign, too, didn't you? A. Like that?

Q. Yes. A. No sir.

Q. What was it you took up to her to sign? A. Didn't take anything.

Q. Were you there when she was asked to sign a paper? A. No sir.

Q. Didn't you have a conversation with Mrs. Mulloy about signing a paper like this? A. No sir.

Q. Never had any conversation with her? A. Not that I can remember, no.

Q. Did you have any conversation with her about signing any paper? A. No, not about signing any paper; no, Mr. Lambert.

219 Q. What was your conversation? A. I told her what my conversation was with her.

Q. Mrs. Mulloy? A. Yes.

Q. Don't you remember that? A. Well, it is the same thing that I told Mr. Kopp here.

Q. Well, what is that? A. Well, that she was very foolish to enter the suit, don't you know.

Q. Didn't you tell Mrs. Mulloy she was very foolish not to sign a paper for Mrs. Waters? A. Yes, I did; I certainly did.

Q. What else did you tell her? A. That was all.

Q. Why did you tell her she was very foolish not to sign a paper for Mrs. Waters? A. Well, because, of course, Mrs. Waters had befriended my sister, and she is in need, and I thought if she signed the paper that Mrs. Waters—not that she would derive any benefit from the life insurance, but I thought Mrs. Waters would be a friend of her more than the other sisters, which she has been.

Q. You thought Mrs. Waters would give her some money, didn't you? A. No sir, but Mrs. Waters has given her money. If it had not been for her I don't know where she would be today. She was a mother to her and to her children. Because she would be

220 a mother to her, that's all.

Q. You thought she would not be a mother to her if she didn't, is that it? A. No, I didn't say that. Even now, if she would come to Mrs. Waters, she would befriend her.

Q. How old is Mrs. Mulloy? A. Let me think. She is older than I am. I can't exactly say, but I know she is at least three years older than I am, and I, if you want to know the correct age, I am thirty-seven.

Q. Mrs. Mulloy is about forty then? A. Well, she is nearly forty.

Q. How old is Mrs. Waters? A. Well I don't know whether that has anything to do with the case.

Q. Is she older or younger than Mrs. Mulloy? A. She is older, but not so very much.

Q. About how much? A. Well, have I got to answer that? I think that is personal. I don't think that I ought to answer that, Mr. Lambert.

Q. Well, suit yourself; if you refuse to answer. A. Well, I am suing myself.

Q. Is she old enough to be a mother? A. No, but people can be mothers and not be old enough to be a mother; I mean to befriend them in the way she has been doing.

Q. Were you served with any summons in this case? A. Summons—let me think. I think I was. Yes, I was served with

221 a summons.

Q. Are you sure about that? A. What?

Q. Are you sure about that? A. Let me see. Wasn't that the summons? Let me see, that Al Wilkinson brought up there? I suppose it must have been.

Q. What did you do with that summons? A. What did I do with it? I didn't do anything with it.

Q. You say you don't know what you did with the summons? A. What I did with it?

Q. Yes. A. Well, I suppose the man left it at the house; it was left there, that was all; I don't know.

Q. Did you employ any counsel? A. No sir, it was not necessary.

Q. Why not? A. Well, I don't know why it was not. I didn't enter this suit and why should I employ counsel?

Q. You were served as a defendant in the suit; why didn't you employ counsel? A. No, I was not either, except that I was with Mrs. Waters, that was all. It was not necessary.

Q. You were with Mrs. Waters? A. No, I am not with Mrs. Waters in it at all. Of course not, you know that yourself.

Q. You just now said you were. A. No, I didn't mean
222 that at all.

Q. Well, what did you mean when you said you were with Mrs. Waters? A. Well, I sanctioned everything she said, because what she said was proper and correct.

Q. And because you thought that, you thought there was no use in employing any counsel? A. Yes, you might say that, too.

Q. Who gave instructions for this answer to be prepared? A. I don't know.

Q. Did you? A. I--no, I don't know.

Q. How did it come to be drawn for you? A. I don't know.

A. You just went down there and signed whatever Mrs. Waters wanted you to sign, did you? A. No, I don't say that either. She asked me to come down there and look at it, I told you that, and I read it and I agreed with her and I signed it.

Q. Do you remember a conversation with Mrs. Kopp in the presence of your sister, Mrs. Smith, in which you stated that the doctor told you that your father died of drinking beer? A. No sir.

Q. Didn't you say that the doctor told you the cause of his illness was drinking beer? A. The doctor never opened his lips to me. Never.

Q. Didn't you say that in your opinion, that was the cause
223 of his illness? A. No sir; emphatically not; he didn't.

Q. On a Sunday about two weeks before your father died were not you at Mrs. Waters' house with Mrs. Kopp and Mrs. Smith? A. I was at Mrs. Waters' house with Mrs. Waters, not with Mrs. Kopp and Mrs. Smith.

Q. Were not Mrs. Kopp and Mrs. Smith present? A. They were on the outside of the house. I was on the inside as a guest of Mrs. Waters.

Q. And didn't you have a conversation then about your father's illness? A. About my father's illness? Only to say that I thought he was quite ill; he was sick and should be in bed.

Q. And didn't you on that occasion say that the doctor told you

that it was beer that was the matter with him? A. Oh no, no indeed.

Q. That beer was the cause of his illness? A. No; that doctor never opened his lips to me, Mr. Lambert.

Q. Well, didn't you say that? A. No indeed, I didn't say anything of the kind.

Redirect examination.

By Mr. WILLIAMSON:

Q. Mr. Jewell, it is stated in the answer of Mrs. Kopp, or in her bill, that she believes, or upon her personal knowledge, that
224 you have arrangements with Mrs. Waters by which you are to get from Mrs. Waters the same amount you would get *it* anyhow, out of this case if she wins it? A. That I have?

Q. Yes. Is there any truth in that? A. No sir, no truth whatever.

ELIZABETH JEWELL.

Subscribed before me this 17th day of May 1909.

J. ARTHUR LYNHAM,
Examiner.

Thereupon—

Mrs. ALICE SMITH, called as a witness on the part of the complainant in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. Mrs. Smith, you are one of the daughters of Mrs. Maria Shea and John Shea? A. Yes sir.

Q. How often did you see your father in the last two or three years of his life? A. I saw my father almost every day.

225 Q. Did you have any special time of the day to see him? A. No sir.

Q. Did you ever see him anywhere else except at home? A. He used to visit me.

Q. How far away did you live? A. About midway of the block, about six doors from Mrs. Waters?

Q. Were there any other places besides your house that your father would go to? A. Well, my father would go out; he would take a car ride occasionally; take a walk down by the Capitol just whenever he felt like it. He didn't go very far from home at any time.

Q. On any occasion during your visit, or while you were in the neighborhood, was there anything that led you to believe that your father was being watched, or his movements restrained by anybody? A. No sir.

Q. What have you to say as to your father being under the influence of liquor or drunk when you visited him, or saw him, during

the last two or three years of his life? A. Well, my father would drink occasionally, and I have seen him under the influence, but he was not what you would call an habitual drunkard.

Q. And what was his condition of mind, so far as you could observe it, during the last two or three years of his life? A. My father was as sane as anybody.

226 Mr. LAMBERT: I object to that as incompetent and irrelevant, and that this witness has not shown herself qualified to answer the question, and I give notice of a motion to strike that out.

Q. When you would see your father, would you talk with him?

A. Yes sir.

Q. For any length of time? A. Yes sir.

Q. How would he talk, rational or irrational?

Mr. LAMBERT: I object. The same objection.

A. Rational.

Q. Was there anything in his appearance or his demeanor or his language that led you to suspect that there was anything wrong about his mind?

Mr. LAMBERT: Same objection.

A. No sir.

Q. After the fund of \$300 apiece had been exhausted, did you have any conversation with Mrs. Kopp about future payments, or did she say anything to you on the subject? A. Mrs. Kopp asked me if I were going to keep up the payments, and I told her that I could not.

Q. And she say anything as to what she intended to do? A. Well, she said no, that she would not keep them up, because she would derive from it just the same as the others.

Q. Well, after that fund was exhausted, as a matter of fact, you didn't pay any more, did you? A. No sir, I did not.

Q. Mrs. Smith, was there any period of time during which you lived in the house with your father? A. Yes sir.

Q. Down to what time was that? A. I was living there when I was married, in 1906.

Q. What time in 1906 were you married? A. November the 28th?

Q. And you lived there down to that time? A. Yes sir, I lived there after that.

Q. Well, what time did you cease to live in the house? A. Well, I don't remember just exactly the day; it may have been about three months; two or three months.

Q. You had an opportunity then of seeing your father while you were in the house, constantly? A. Yes sir.

Q. Mrs. Kopp has testified, as I remember it in this case, that she had a conversation with you, in which you said that you had no money to fight this case with, and that even so, you expected to

be benefited by her fighting it, and that you would do so at her expense. Did you have any such conversation with her?

A. I told Mrs. Kopp that I hadn't the money to fight it and even if I had I would not, because I did not think that I had any right to the money; if I was not paying it I would not expect anything from it.

Q. What sort of a man was your father with respect to
228 being led by other people, or doing as he pleased?

Mr. LAMBERT: I object to that. The same objection.

A. My father always did as he pleased.

Q. While you were living there and after you left and visited him, was there anything that led you to suspect that he was being watched, or his movements being controlled by the Waters family?

Mr. LAMBERT: Same objection?

A. No sir.

Q. While you were living there did you ever see anything of that sort? A. No sir.

Q. While you lived there and after you left, did you ever see anything in the way of restraint upon his movements, by anybody?

Mr. LAMBERT: I object?

A. No sir.

Q. What did he do with respect to going out when he desired to?
A. He would come and go as he liked.

Q. Have you any arrangement with Mrs. Waters by which she has agreed to pay you the same amount you would get in any event, if she won this case? A. No sir.

Cross-examination.

By Mr. LAMBERT:

Q. Mrs. Smith, when was it that you say you had this talk with
Mrs. Kopp about keeping up the life insurance? A. Well,
229 it was right after they all said that they were going to drop
it. I don't remember the day or the time.

Q. Right after they all said they were going to drop it? A. Yes;
some said they were not going to keep it up Mrs. Kopp said so; was
not going to keep them up.

Q. When was this? A. I don't remember.

Q. Do you remember what year it was in? A. No, I do not.

Q. Was it before the money was exhausted, as it has been spoken
of here, in connection with the—— A. (Interposing.) I think it
was after the \$300 had been spent.

Q. You think it was after that? A. I think it was.

Q. How soon after that? A. Well, I don't remember exactly how
soon it was, but I know it was after.

Q. You can't fix the time at all? A. No.

Q. Do you know anything about any payments being made by
any of the parties after that money was exhausted? A. Well, I don't

know, Mr. Lambert. I think Mrs. Waters and Mrs. Jewell kept it up for a while, but I didn't.

Q. You didn't? A. No.

Q. Don't you know Mrs. Kopp kept it up for a while?

230 A. I don't remember whether she did or not.

Q. Your father used to come up to see you sometimes, didn't he? A. Yes.

Q. Didn't your father tell you every time he came up to see you, that when he got back the Waters wanted to know what he had said to you, and what had transpired? A. No sir.

Q. Never told you that? A. No sir.

Q. Did you tell Mrs. Kopp that? A. I don't remember.

Q. Was it a fact that that happened? A. My father used to visit me.

Q. Didn't he, as a matter of fact, tell you that he used to be questioned? A. No, I don't remember.

Q. Don't remember that? A. No.

Q. You are not positive whether you told Mrs. Kopp that or not? A. No.

Q. Do you remember an occasion going down there when your father was sick and you were with Mrs. Kopp, I believe, were you not, at the window? A. Yes.

Q. That was the day that Mrs. Waters would not let you
231 and Mrs. Kopp in, wasn't it? A. Yes.

Q. Now, tell us what was said there about what was the trouble with your father? A. There was not any trouble with my father.

Q. Wasn't there something said about what was the matter with your father—what your father was suffering from? A. No.

Q. Don't you remember saying on that occasion, through the window, "Tell us what is the matter with your father?" A. I said that?

Q. Yes. A. No.

Q. "Tell us what the doctor said?" A. No, I don't remember that either.

Q. Don't you remember Mrs. Jewell responding that the doctor said it was beer? A. No, I don't remember that.

Q. Don't remember that? A. No.

Q. Mrs. Waters has been very friendly with you since this litigation, hasn't she? A. Yes.

Q. Made you a great many presents, hasn't she? A. Yes, and Mrs. Waters was a good mother to my father.

Q. And made you a present of the suit you are wearing now, didn't she? A. Yes.

232 Q. Did she make you any presents before this suit began?

A. Yes, Mrs. Waters has always been very friendly to me and all of her sisters.

Q. I say did she make you any presents of suits of clothes before this? A. No.

Q. This is the first suit of clothes she has made you a present of? A. Yes.

Q. Were you served with a summons in this case? A. Yes.

Q. What did you do with it? A. I destroyed it.

Q. Did you sign that answer there? A. I think I did.

Q. How did you come to sign that? A. Because I read it and thought it was correct?

Q. Where did you sign it? A. Down at Mrs. Waters'.

Q. How did you come to be there? A. I don't remember whether I was sent for or not, because I always go up to Mrs. Waters' house.

Q. Who asked you to sign it? A. No one asked me to sign it.

Q. Who produced it for you?—who gave it to you? A. Well, the paper was on the table when I went in there.

233 Q. Have any talk about it at all? A. Before I signed it?

Q. Yes. A. No, I didn't, only asked to look it over.

Q. And how did you come to sign it then? A. Because I thought it was correct.

Q. Nobody suggested to you to sign it? A. No.

Q. Sure about that? A. Certainly.

Q. Did you direct anybody to prepare that answer for you? A. No.

Q. You were relying on Mrs. Waters to look after the matter for you, were you not? A. I don't understand what you mean.

Q. I say you were relying on Mrs. Waters to look after the matter for you, were you not? A. After what matter?

Q. After this matter—this case? A. I told you before I hadn't any intention of fighting this case, because I hadn't any money to do it, and even if I had, I would not have, because I didn't think I had any right to do it.

Q. Didn't you say to Mrs. Kopp that you would get just as much whether you fought this case or not? A. If Mrs. Kopp should get any, of course I would get the same as she got.

234 Q. You told her that? Yes.

Q. Didn't you tell her that you would also get just as much if Mrs. Waters won? A. No.

Q. Didn't you on one occasion call up Mrs. Kopp, about 11 o'clock at night, and tell her that everybody had left your father there alone, and that he was sick, and didn't you break out crying on the telephone? A. I called Mrs. Kopp up, but I don't remember bursting out crying.

Q. Did you tell her what I have just said? A. Yes.

Q. Don't you remember of calling on Mr. and Mrs. Kopp after this litigation started, you and your husband, and saying there that you would give \$500 if you could get your share of this estate? A. Oh, for goodness sakes; never in the world.

Q. Did your husband say that in your presence? A. No, never.

Q. Nothing of the kind? A. Nothing ever happened, no sir.

Q. Well, now didn't that conversation that I have just indicated, take place about November, 1908? A. I don't remember the date Mr. Lambert.

Q. You have only been there twice, haven't you? A. Been where?

Q. To Mr. and Mrs. Kopp's? A. I have been there three times.

235 Q. Three times? A. Yes.

Q. You don't remember this conversation? A. I certainly didn't tell him anything of the kind, either Mr. Kopp or his wife.

Q. Did Mr. Smith tell him? A. No, Mr. Smith didn't.

Redirect examination.

By Mr. WILLIAMSON:

Q. Did Mr. Kopp on any occasion come to you and ask you if he could get your father to write his name on a piece of paper and give the piece of paper to him? A. Yes sir.

Q. When was that?

Mr. LAMBERT: I object to that; it is not proper rebuttal examination, and is irrelevant and immaterial.

A. I don't remember, Mr. Williamson, the time.

ALICE M. SMITH.

Subscribed before me this 17th day of May, 1909.

J. ARTHUR LYNHAM, *Examiner*.

(At this point an adjournment was taken until further notice.)

236 TUESDAY, *May 4th*, 1909—3 o'clock p. m.

Met, pursuant to notice, at the office of the Examiner, to resume the taking of testimony in rebuttal on the part of the complainant.

Present, Irving Williamson, Esq., solicitor for the complainant; Wilton J. Lambert and Rudolph H. Yeatman, Esqrs., solicitors for the defendants, and the Examiner.

Whereupon—

LOUIS W. WELLS (Colored), called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. What is your business? A. Barber.

Q. How long have you carried on that profession? A. About thirty years.

Q. Where has your shop been for the last four or five years? A. My shop has been at 213 on 4½ Street, for the last 18 years.

Q. Did you know the late John Shea in his lifetime? A. Yes sir.

Q. For about how long? A. Well, I have known him for about 20 years; just known of him; seen him passing; known of
237 him and seen him passing.

Q. In the last 5 years of his life, did you have any transactions or acquaintance with him? A. In the 5 years he began to come to my shop regularly and was my regular customer, and I looked after him all the time.

Q. About how often would he come? A. Well, when he first began he came about three times a week.

Q. And did that continue the last years of his life? A. Well, the last years of his life, the last two years he used to pay me 25 cents——

Q. I didn't ask you that. I asked you how long he came, when he came three times a week. A. Oh, about two or three years, I guess.

Q. Did he come alone when he came, or was somebody with him? A. He always came alone.

Q. How long did he stay? A. Oh, sometimes me and him get to talking there about different things, and he would stay for about little over half an hour; maybe longer than that sometimes.

Q. What have you to say as to his condition any time that you saw him? so far as the use of intoxicating liquors are concerned. A. Oh, so far as that is concerned, I never seen him drunk, in my life; if he was drunk, I didn't know it.

Q. When he came to your shop to be shaved, would he
238 talk with you? A. Oh yes. He knew a great many things I knowed about, all around that section, and we talked about different things; different people, whether they died, and different ones that had gone away, and so on like that.

Q. Was his talk rational or irrational?

Mr. LAMBERT: I object. He is not sufficiently qualified to give an opinion.

A. Oh, he always talked to me quietly along like any one else would.

Mr. LAMBERT: I move to strike that out.

Q. So far as you observed from his actions and from what he said, what would you say as to the condition of his mind? A. I thought all the time he had a very good mind. He could remember those old things way back.

Mr. LAMBERT: I object to that as incompetent and irrelevant.

A. (Continuing:) He would tell me about way a long time ago different men getting shot and how things happened. We talked there for sometime. I always took good pains with him because he always gave me a quarter. And then when he would get through and start away he would say "Take care of yourself; I will be back" such and such a day.

Q. Well, would he come when he said he would come? A. Every time.

Cross-examination.

By Mr. LAMBERT:

Q. Where do you say you live, 213 4½ Street? A. Yes
239 sir.

Q. And how near do you live to Mr. Waters? A. Well, he lives on Maryland Avenue between 3d and 4½.

Q. Do you keep a saloon? A. I keep a barber shop at 213 4½ Street. Mr. Waters' place is down there between 4½ and 3d Street, on Maryland Avenue?

Q. You know Mr. Waters, don't you? A. Oh yes, I know Mr. Waters the last year or so.

Q. Does he keep a saloon in the same block you are in on 4½ Street? A. Yes sir.

Q. And he patronizes your shop too, don't he? A. No sir.

Q. He never comes there? A. No sir.

Q. He never comes there? A. He never comes there, only when he wants some papers signed or something.

Q. Papers signed? A. He comes there when he wants a paper signed for the business.

Q. Do you visit Mr. Waters' saloon? A. Well, sometimes. I don't make much practice of visiting any of them so very often. I go there sometimes.

Q. You have been a friend of Mr. Waters for a long time, haven't you? A. Me—oh no, I am not.

240 Q. How long have you known him? A. Well, the last year or so. I knowed of him, but I didn't know him until he opened up that saloon up there.

Q. When was that? A. I can't tell, six or eight months ago, I reckon; maybe more or less; I don't know; I didn't take notice of the time.

Q. You have known him ever since then though? A. Oh well, I knowed him off and on. I knowed him when I seen him.

Q. Did he ask you to testify here? A. Why he asked me if I know anything about Mr. Shea. I told him yes, I used to shave him.

Q. Who asked you, I said? A. Mr. Waters asked me.

Q. He asked you to come up here? A. He asked me to come up.

Q. You say you had that place down there for eighteen years? A. Oh yes sir, for 18 years.

Q. Continuously, right along? A. Right continuous, right along.

Q. Been running a barber shop there ever since the last 18 years? A. Running a barber shop there for the last 18 years.

Q. Is it a white or colored barber shop? A. Colored. Well, I won't say colored. I shave anybody; anybody that comes in there and wants a shave.

241 Q. You shave both colored and white? A. Yes sir.

Q. How is it generally known, as a colored barber shop, isn't it? A. Well, that is the way it is pictured.

LEWIS W. WELLS.

Subscribed before me this 17th day of May, 1909.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon—

EUGENE L. GROS, called as a witness on the part of the defendant, in rebuttal, and being first duly sworn was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. What is your business, Mr. Gros? A. Cigar dealer.

Q. How long have you been in that business? A. About 35 years—15 years in Washington.

Q. Where are you located? A. I am located—my residence?

Q. No, your place of business. A. 450 Maryland Ave.

242 Q. How long have you been there? A. A little over two years?

Q. Where were you before that? A. 119 4½.

Q. Did you know the late John Shea? A. Knew him very well.

Q. For how long? A. About 14 years.

Q. Did you have any business dealing with him during the last five or six years of his life? A. He used to visit my store at least three or four times a week.

Q. What would he come there for? A. Just to get a few cigars or package of tobacco.

Q. And did you have any talk with him when he was there? A. Oh yes, we used to talk on general topics; nothing particular.

Q. How did he express himself? A. As well as any sound man I ever seen.

Mr. LAMBERT: I move to strike that out as irrelevant and immaterial, and the witness not having shown himself qualified.

Q. Do you remember any subject you ever talked with him about? A. None particularly, except on one occasion. He used to, when he didn't feel well, he used to send his grandson I think it is, a little boy, after a cigar or two, or sometimes a dozen, and he had
243 a certain brand that he liked. Of course when you have a show case you have certain brands, and he took a fancy to a certain kind, and the boy, when he said he wanted one with the band——

Mr. LAMBERT: I object to any conversation with the boy.

Q. Just go ahead. A. Well, the old gentleman on one occasion, came to the store, and he says "Why didn't you send me the cigars that I liked?" I said "Well, your little boy won't take them; he wants those with the band." He said "Well, hereafter I will either come myself, and I will get a box of them that will last me several days."

Q. How was his conversation when he talked with you, rational or irrational?

Mr. LAMBERT: I object on the same ground, as irrelevant and immaterial, the witness not having shown himself competent to testify.

A. Always rational.

Q. What have you to say with respect to his being under the influence of liquor at any times that you have seen him? A. I never saw him under the influence of liquor. He may have been a man that drank. He told me that he had been in the business, but I never saw him under the influence of liquor. Some men can stand more liquor than another, of course. I never saw any signs of it.

244 Cross-examination.

By Mr. LAMBERT:

Q. You say you live at 450 Maryland Avenue? A. No, I keep a store there.

Q. How near is that to Mr. Waters? A. About half a square.

Q. Does Mr. Waters own the store you are in? A. No sir.

Q. When was this you say you had this talk about cigars with Mr. Shea? A. Oh, that might have been four or five years ago.

Q. It might have been four or five years ago and it might have been longer, ha? A. I know it was not no longer than that; about five years, probably.

Q. About five years? A. Yes, four to five.

Q. You didn't see him much during the last two years of his life, did you? A. Yes I did.

Q. Where did you see him? A. Well, coming by; passing by.

Q. Just passing by the place? A. Just a few months before he died I think he was sickly and he didn't come out much. Yes, he passed by.

Q. Now, who was this grandson you spoke of, that came for the cigars? A. I don't know him?

Q. Was he one of Mr. Waters' children? A. I can't
245 say.

Q. Who spoke to you about testifying here? A. Mr. Waters.

Q. How long have you known Mr. Waters? A. Oh, I have known him by sight probably five or six years, but not well until last year.

Q. During the last year you have been pretty intimate with him? A. No, not intimate.

Q. Sell him cigars? A. No, I don't sell him any cigars. He is just a neighbor. He met me on the street one time and he had an automobile, and asked me if I was going down the street, and I said yes, I am going down to the store, and he said I might want you to come and testify in reference to Mr. Shea, what you know of him, and I said "All right, sir, let me know when you are ready." And yesterday he asked me to come up here today at 3 o'clock. No object of the conversation, that was all.

— You are a visitor at Mr. Waters' saloon, are you not? A. No sir, I might go in there once in a month or twice.

Q. Have you ever smelled any liquor on Mr. Shea's breath? A. No.

Q. Never noticed any liquor on him? A. No.

246 Q. You mean to state here he was not a drinking man?

A. I didn't say that. I say I never seen him under the influence of liquor.

Q. And what do you mean by not having seen him under the influence of liquor? A. Well, if a man shows a sign, if he speak irrational, if he staggers. He never showed any stagger or spoke irrational.

EUGENE L. GROS.

Subscribed before me this 17th day of May, 1909.

J. ARTHUR LYNHAM,

Examiner.

Thereupon—

DANIEL J. SULLIVAN, called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. What is your business, Mr. Sullivan? A. Plate printer.

Q. Are you employed in the Bureau of Engraving and Printing?

A. Yes sir.

247 Q. How long have you been so employed? A. 16 years the 14th of next June.

Q. Do you know Mr. Waters here? A. Yes sir.

Q. Did you know Mr. Shea in his lifetime? A. Yes sir.

Q. Did you, at the request of Mr. Waters, act as his messenger in carrying anything to Mr. Shea at any time? A. Yes sir.

Q. When was that, Mr. Sullivan. A. I just figured it up there. It was on the steamer Pocahontas, and the steamer St. John had been running for two years, and it was the year that the Pocahontas was running, that was two years ago last summer.

Q. What were the circumstances under which you acted as messenger for Mr. Waters? A. Well, I had never spoken to Mr. Shea in my life until down to Colonial Beach. He knew me and knew who I was, and I knew him.

Q. Let me ask you, was your family at Colonial Beach? A. Yes, my family was at Colonial Beach in the summer.

Q. What was your custom, did you stay there or go there occasionally? A. I would go down every Saturday afternoon and come back Monday morning, sometimes.

Q. What business did you transact for Mr. Waters, with Mr. Shea? A. Mr. Shea requested me to take a letter up, and I took the letter up and I didn't know what the letter was, and on the following Saturday afternoon, it was on a Saturday, on 4½
248 Street, in Matthews and Brown's, Mr. Waters came in with an envelope, and asked me to take it to the Beach, and said there was \$50 in it, and I said "Open the envelope." I said I would not be a messenger for my brother in that way; I would not go down

to the boat with an envelope without my knowing what was in it. He opened it and I found \$50. I carried it down and went to where he was stopping, and it was the Breakers, the name of the place, and the lady, Mrs. Cahill, asked me to leave it. She said "It is money; he is expecting it." I said "I won't leave it here; it is money." I found him in the annex; he was in bed, and I handed it to him.

Q. Any subsequent transaction? A. Yes, I carried him \$50 down another time.

Q. Was that all? A. No, I carried \$40 in money and a certified check for \$25.

Q. Were these various remittances given you by Mr. Waters? A. Yes, by Mr. Waters.

Cross-examination.

By Mr. LAMBERT:

Q. This first one you speak of, what time did you get to Colonial Beach that day? A. I think in the neighborhood of 11 o'clock at night; I should judge; about 11 o'clock at night.

Q. That was the time the boat got in? A. About the time the boat got in.

249 Q. Did you deliver it to Mr. Shea that night? A. Yes; I delivered it to him that night. He was in bed when I brought it to him.

Q. The next time? A. I gave it to him in person; he was waiting for it.

Q. What time did you get there? A. About the same time, when the boat got in.

Q. You took it down the third time, did you? A. Yes.

Q. What did you take down? A. \$40 and a certified check for \$25.

Q. That made \$65? A. Yes sir.

Q. Of course you don't know whose money that was, whether it was Mr. Shea's money or Mr. Waters' money? A. No sir, I don't, only that Mr. Waters gave it to me, that was all.

Redirect examination.

By Mr. WILLIAMSON:

Q. I forgot to ask you one question. On any of your trips to Colonial Beach did you meet Mr. Edward Shea? A. Yes sir.

Q. The son of John Shea? A. Yes sir.

Q. You knew him, did you? A. I knew him better than—in fact he was the only one in the family I really knew.

250 Q. How many times did you meet him? A. Only once going down on the boat.

Q. Did you have any conversation with him with respect to Mr. Shea? A. Yes sir.

Q. Did you know anything about his being the bearer of anything? A. Nothing more than what he told me; I didn't see that

he had it, or what he gave him, or anything. He told me he was taking money down to——

Mr. LAMBERT: I object to any conversation with Edward Shea.

Recross-examination.

By Mr. LAMBERT:

Q. When did these occurrences take place that you speak of; when you took \$50 down the first time, when was that? A. It was in the summer; two years ago this past summer.

Q. Two years ago? A. Yes sir.

Q. Was it the same time you took the second down? A. Yes, it was all in the summer two years ago.

Q. The summer of 1907? A. Yes sir.

Q. Did you ever take a drink with Mr. John Shea? A. Yes sir, I did.

Q. Did you ever see him down there much? A. I only saw
251 him on a Sunday down there. I had been spending my time later in the season, around September, and he was not there when I spent my time there.

By Mr. WILLIAMSON:

Q. Was it two years ago this summer? A. Two years ago last summer.

By Mr. LAMBERT:

Q. 1906, then? A. Yes.

DANIEL J. SULLIVAN.

Subscribed before me this 19th day of May, 1909.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon CHARLES B. WILSON, called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. Mr. Wilson, what is your business? A. Insurance solicitor.

Q. Did you know Mr. Shea, John Shea? A. Yes sir.

Q. When did you first become acquainted with him? A. In
April, 1907.

252 Q. Where did you see him and how often after that time?

A. I used to see him in the neighborhood, when he lived there; sometimes in the yard; sometimes about the house; sometimes on the street.

Q. About how often would you see him? A. Well, usually once a week, but sometimes oftener.

Q. What was the occasion of your visit to the house where he lived? A. Collecting insurance from Mrs. Waters there. She had some policies in our company.

Q. Did you talk with Mr. Shea on any of those occasions? A. Frequently did.

Q. What did you talk about? A. Well, passing events; nothing in particular that I know of.

Q. On any of the occasions that you saw him, state whether he was under the influence of liquor? A. Never seen him under the influence of liquor.

Q. State what was the character of his conversation, whether it was rational or irrational.

Mr. LAMBERT: Objected to as irrelevant and immaterial; as far as this witness is concerned he has not shown himself qualified and does not state any acquaintance with him until April, 1907.

A. He was rational.

Q. Do you remember how these policies—on the life of what person these policies were—were they small policies or large policies?

A. Small policies.

253 Q. Do you remember whose lives they had reference to?

Mr. LAMBERT: I object.

Mr. WILLIAMSON: All right, I won't go into that.

Cross-examination.

By Mr. LAMBERT:

Q. What time of day did you go down there to make your collections? A. Well, it was somewhat varied. Generally along in the afternoon; sometimes go in the morning, though.

Q. What time did you go in the morning? A. Well, I had no set time.

Q. Well what was your usual time? A. Well, ten to eleven o'clock, something like that.

Q. Where did you see Mr. Shea, in the house? A. Sometimes in the house and sometimes in the yard.

Q. You didn't have any business with him? A. Not especially.

Q. You didn't have any policies with him? A. No, nothing that he handled.

Q. And your seeing him was mostly there in the morning, wasn't it? A. Not necessarily.

Q. I say mostly, wasn't it? A. No sir.

254 Q. Did you ever see him there at night? A. I don't remember that I ever seen him late at night.

Q. What is the latest you ever saw him? A. That would be rather hard for me to say, for I could not from memory.

Q. Can you give us any idea? A. I was oftener in the neighborhood around in the evening, around dusk, but I could not say positively.

Q. Where would you see him then? A. Saw him on the street oftentimes; I have met him on the street oftentimes, sir.

Q. Did you stop on the street and talk to him? A. Sometimes I did and sometimes spoke and go on.

Q. Was Mr. Shea paying any of these premiums you speak of? A. No sir, not that I know of. He didn't pay me, anyhow.

Q. You didn't get any money from him? A. I didn't get any money from him, no sir.

CHAS. B. WILSON.

Subscribed before me this 18th day of May, 1909.

J. ARTHUR LYNHAM, *Examiner*.

255 Thereupon—

JAMES C. BROWN, called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. What is your business, Mr. Brown? A. Why, inspector of the Prudential Insurance Company.

Q. Did you know Mr. John Shea? A. Yes sir.

Q. About how long did you know him before his death? A. Why, about six years probably this fall.

Q. Did you see anything of him? A. Oh yes, I used to see him around the house and out in the yard, in the swing or on the bench.

Q. About how often would you see him? A. Sometimes I was in the house every week, and then sometimes once a month, just as the agent would require my attention along there.

Q. When you speak of the house, you mean the house of Mr. Waters? A. Mr. Waters, yes sir.

Q. On the occasions that you saw him, did you have any talk with him at all? A. Why, I always used to bid him the day and ask him how he was; always spoke to him when I passed him.

Q. Did you at any time see him under the influence of
256 liquor on any of those occasions? A. No sir.

Q. Do you remember anything that he said in the way of a conversation? A. No, we never had any long conversation together only asked him how he was, and pleasant day, or good weather, or bad, something of that sort.

Q. Was his conversation or his answers to your questions intelligent, or did they show want of intelligence?

Mr. LAMBERT: I object.

A. They were intelligent.

Cross-examination.

By Mr. LAMBERT:

Q. About all you ever said to him was "Howdy-do," or what kind of day it was, was it? A. Yes, I never had any long conversation.

Q. You never had any conversation at all, just passing the day, wasn't it? A. Well, I stopped in front of him for a minute or two or a few minutes.

Q. Did you always see him in the day time? A. Yes, sir, between the hours of nine to four, about the usual time I would get in there.

Q. What time did you usually get down there, mornings or evenings? A. Mornings.

Q. You were doing business with Mr. Waters, were you? A. My agent collected from the family.

257 Q. From the Waters family? A. Yes sir.

Q. You never had any business with Mr. Shea at all? A. No sir.

Q. You are still doing business with the Waters? A. I was up until the last—probably November or December, that I was transferred away from that District. I am in Annapolis, Maryland, now.

Q. Your company is still keeping up the same policies on Mr. Waters? A. Yes.

JAMES C. BROWN.

Subscribed before me this 18th day of May 1909.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon—

Mrs. ROSE BROWN, called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. Where do you reside, Mrs. Brown? A. 905 I Street, Northwest.

258 Q. How long have you lived in Washington. A. I have been in Washington pretty near all my life, I guess.

Q. Did you know the late John Shea? A. Yes sir.

Q. How long did you know him? A. I guess I have been knowing Mr. Shea thirty-odd years.

Q. During the last five years of his life did you see anything of him? A. Yes, I used to see him two or three times a week.

Q. And where would you see him? A. At the house and sometimes on the street.

Q. When you speak of the house, you mean Mr. Waters' residence? A. Mr. Waters', yes sir.

Q. During the times that you saw him there, did you have any conversation with him? A. Yes sir, always did.

Q. What was the nature of the conversations? A. Well, just talked about different things that would happen; going to school, and so on, the girls; we were all friendly school girls together, his daughter and I.

Q. Did you on the occasion of any of your visits ever see him under the influence of liquor? A. I never saw him drunk, no sir.

Q. Did you ever see him drink anything? A. I have seen him take a glass of beer; a cup of beer.

259 Q. Did you see him during his last illness? A. Yes sir. I saw him two or three days before he died.

Q. Was he able at that time to talk? A. He sat up when I was there and talked to me, and I was telling him about my trip back from New York.

Q. Did he recognize you on that occasion? A. Yes sir, not only that but my husband was in the kitchen, and he recognized his voice from the kitchen.

Q. During the last few years of his life and down to the time of his last illness, you may state whether his conversation with you was rational or irrational.

Mr. LAMBERT: Objected to, the witness not having shown herself qualified, and that the question is not a proper one.

A. Rational.

Q. Was there ever anything in his conversation or conduct or in his appearance during the last five years of his life, or at any time during your acquaintance with him, which showed that his mind was in any way affected or impaired? A. No sir, not as I could see.

Mr. LAMBERT: Same objection, and the further objection that the question is improperly framed.

Q. During your acquaintance with him and knowledge of him during all these years, you may state whether, in your opinion, he was competent, in the last few years of his life, to attend to business or execute a deed or contract? A. Yes sir, as far as I knew,
260 he was.

Mr. LAMBERT: Same objection.

Q. I think you said that you had known Mrs. Waters for some time. A. We went to school together.

Cross-examination.

By Mr. LAMBERT:

Q. You have been a great friend of Mrs. Waters all your life, have you? A. Yes sir.

Q. Visit her house a good deal? A. Yes.

Q. Stay there? A. Stay there?

Q. Yes. A. Well, what do you mean by staying there?

Q. Live there together? A. No sir, just a friend.

Q. Ever stay there over night? A. Oh yes, I stayed there many a time at night before I was married.

Q. Do you remember the night of Miss Shea's marriage—the marriage of Mr. Shea's daughter Alice? A. Yes sir.

Q. Didn't you see him intoxicated that night? A. No sir, I didn't, because I was not back where the men were.

Q. What is that? A. I was not back where the men were.

261 Q. That is the reason you didn't see him intoxicated? A. Well, I didn't see it.

Mr. WILLIAMSON: I object to that question, because she said she didn't see him.

Q. You have been down there to parties, on different occasions, haven't you, Mrs. Brown? A. Yes sir.

Q. And you have seen Mr. Shea very much intoxicated on several occasions? A. Not that I know of, at a party, no sir.

Q. Not at a party? A. No sir.

Q. When other than at a party have you seen him? A. I don't know as I have ever seen him really intoxicated that I know of.

Q. What do you call "really intoxicated?" A. Drunk.

Q. And what do you call drunk? A. Well, you know what a drunken man is, don't you?

Q. Yes, what is called paralyzed, is that it? A. I don't know what you mean by "paralyzed."

Q. What do you mean by "drunk," then? A. Well, a drunken man is one who staggers and can't walk, that is what I call a drunken man.

Q. You never saw him that bad? A. No sir, I never did.

ROSA B. BROWN.

262 Subscribed before me this 17th day of May, 1909.

J. ARTHUR LYNHAM,
Examiner.

(At this point an adjournment was taken until further notice.)

FRIDAY, *May 7th*, 1909—2 o'clock p. m.

Met pursuant to notice, at the office of the Examiner to resume the taking of testimony in rebuttal, on the part of the complainant.

Present: Irving Williamson, Esq., solicitor for the complainant; Wilton J. Lambert and Rudolph H. Yeatman, Esqrs., solicitors for the defendants, and the Examiner.

Whereupon—

WILLIAM JEWELL, called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. What is your business, Mr. Jewell? A. Bookkeeper.

Q. Where, sir? A. E. J. Adams & Company.

Q. How long have you lived in Washington? A. All my
263 life.

Q. You are the husband of Mrs. Jewell, one of the daughters of John Shea? A. I am.

Q. How long did you know John Shea? A. I suppose for about 23 years; 23 or 24 years.

Q. Take the last three or four years of his life, did you see anything of him? A. Occasionally, yes sir.

Q. About how often would you say a month would you see him? A. Oh, I suppose on an average of two or three times a month.

Q. And where? A. At his home.

Q. On the occasions that you saw him there did you have any conversation with him? A. Yes, I used to talk with him.

Q. What did you talk about? A. Well, in the last two or three

years about that time I was buying a house, and he thought a good deal about that and said he wanted to come up and see it.

Q. Did he come up and see it? A. Yes sir.

Q. During your acquaintance with him, and referring to the last three or four years of his life, what have you to say about his habits of drink? A. Well, I have seen him drink.

Q. What would he drink? A. Beer.

264 Q. Did you ever see him drink anything but beer? A. No sir.

Q. In the talks that you have had with him during the last three or four years of his life, about your house and on any other subject, state whether his conversation was rational or irrational?

Mr. LAMBERT: Objected to as irrelevant and immaterial, the witness not having qualified to answer the question, and the question being improperly framed.

A. Perfectly rational to me.

Q. Did you see him in his last illness? A. I did.

Q. Did you have any conversation with him then? A. No, no conversation. He recognized me just before he died.

Q. Well, how do you know that he recognized you? A. Called me by name.

Q. Taking into consideration your acquaintance with him, and the talks that you had with him, state whether or not, in your opinion, during the last two or three years of his life, he was competent to enter into any business transactions? A. I think so, yes sir.

Mr. LAMBERT: Same objection.

Cross-examination.

By Mr. LAMBERT:

Q. Mr. Jewell, how many business transactions did you have with Mr. Shea in the last four years of his life? A. I didn't
265 have any with him.

Q. Never did. A. No sir.

Q. You never had anything to do with any contract or agreement or deed, or anything, with him, did you? A. No sir.

Q. You are the husband of one of his daughters? A. Yes sir.

Q. Of the Mrs. Jewell who testified here the other day? A. Yes sir.

Q. Where would you see him on those occasions you speak of seeing him? A. Saw him at his home; down stairs; dining room.

Q. In Mr. Waters' house? A. Yes sir.

Q. You and your wife were frequent visitors at Mr. Waters' house, are you not? A. Two or three times a month; not oftener than that.

Q. You go around a great deal together, don't you, automobiling, and things of that kind? A. In the last two or three years, possibly we did.

Q. Well, that relationship continued right up to now? A. Yes.

266 Q. Mr. Jewell, you say you have seen Mr. Shea take his drink of beer, have you? A. Yes sir.

Q. How often have you seen him under the influence of liquor? A. Well, it has been a long time since I saw him under the influence of liquor.

Q. It has been some time, has it? A. Yes sir.

WILLIAM JEWELL.

Subscribed before me this 17th day of May 1909.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon—

CHARLES L. SMITH, called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. What is your business, Mr. Smith? A. Bank teller.

Q. What bank? A. Dime Savings.

Q. How long have you been employed there? A. About a year and a half.

Q. How long have you lived in Washington? A. About fifteen years, I guess.

267 Q. You married Miss Alice Shea, did you not? A. Yes sir.

Q. When were you married, Mr. Smith? A. In 1906.

Q. Did you know Mr. Shea before that time? A. Yes sir.

Q. How did you become acquainted with him? A. Through my wife.

Q. Where did you live prior to your marriage? A. Prior to marriage?

Q. Yes. A. Down to his house.

Q. And for how long? A. Two or three years before I was married.

Q. After you were married where did you live? A. Lived there for some time.

Q. And then where? A. Moved up to the flat then, two or three doors above.

Q. Where do you live now? A. Same place.

Q. After you moved from the house, did you see anything of Mr. Shea? A. Yes, every day.

Q. While you lived there and after you were married and were visiting there, did you have any talk with Mr. Shea? A. Oh yes, every day, very near.

Q. What would you talk about? A. Current topics of the day.

268 Q. How did he express himself? A. How do you mean, intelligently, or——

Q. Yes. A. Always, yes sir.

Q. Now, did you see Mr. Shea drink while you lived there, or while you were visiting there? A. Yes sir.

Q. What did you see him drink? A. Beer.

Q. Did you ever see him drink anything else? A. No sir.

Q. While you were living at the house did you see anything in relation to Mr. Shea's—what did he do during the summer evenings, for instance? A. Sometimes he would be up at the corner for an hour or two, up at the fruit stand; I have seen him do that, and then he would walk out in the yard and walk up to my house.

Q. Did he ever visit your house after you left there? A. Yes.

Q. From your acquaintance with Mr. Shea and conversations with him, and observations of him, what have you to say as to your opinion with reference to his ability during the last two or three years of his life to understand or to enter into any business arrangement?

Mr. LAMBERT: I object, the witness not having shown himself qualified to answer, in the first place, and in the second place, the question is improperly framed.

269 A. What do you mean, about his ability?

Q. Yes. A. I thought he was qualified to enter into any business agreement; he was perfectly rational at all times.

Cross-examination:

By Mr. LAMBERT:

Q. Did you have any business dealings with Mr. Shea? A. Yes sir.

Q. What was that? A. I had a good many checks of his cashed.

Q. At the bank? A. Yes sir.

Q. I mean did you personally ever have any business with him?

A. Oh, you mean personal business between us two?

A. Yes. A. No sir.

Q. Did you ever have any deeds or contracts pass between you in any way? A. No sir.

Q. You spoke of having lived down there in his house? A. Yes sir.

Q. Whose house do you mean? A. Mrs. Waters'.

Q. Mrs. Waters' house? A. Yes sir.

270 Q. You say you lived there two or three years before you were married? A. Yes sir.

Q. Who composed the household then—who was living there? A. Mrs. Waters, Theresa Waters and John Waters, and Mr. Shea and my wife, she lived there about a year, I guess, before—I was there before she was.

Q. After you left there you say you went to the flat to live? A. Yes sir.

Q. When was that? A. Just above the home there; two or three doors above.

Q. Whose flat is that? A. Well, Mr. and Mrs. Waters', I guess.

Q. They own the flat? A. Yes sir.

Q. You have been living there ever since? A. Yes sir.

Q. You and your wife have always been friendly with the Waters, I suppose? A. Yes sir.

Q. Visit each other a good deal, don't you? A. Yes sir.

Q. Go out in automobiles together? A. Well, not so often as we do with others.

Q. Well, I say you do, though? A. Yes.

271 Q. You say you saw Mr. Shea drinking beer? A. Yes sir.

Q. How many times have you seen him under the influence? A. I could not tell you the exact number of times; it was not every day.

Q. You would be away most of the day, wouldn't you? A. Yes, I would be home in the evening; every evening about three o'clock.

Q. Be home that soon? A. Yes sir.

Q. From the bank? A. Yes sir, I worked at the East Washington Savings Bank, then, and I got through earlier.

Redirect examination.

By Mr. WILLIAMSON:

Q. What checks were those that you cashed for him? A. Why, they were his own checks that he would—he would want some money or something; his own checks.

Q. Do you remember what bank they were on? A. Washington Loan and Trust, I think.

Q. How recently have you cashed any checks for him? A. I could not remember just exactly.

Q. You pay rent for the flat you live in? A. I do; I better had.
CHAS. L. SMITH.

272 Subscribed before me this 17th day of May, 1909.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon—

Miss THERESA WATERS, called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. Miss Waters, you are the daughter of Mr. and Mrs. John O. Waters? A. Yes sir.

Q. I don't believe you have any objection to telling us how old you are? A. Eighteen.

Q. Your grandfather lived there in the house with you? A. Yes sir.

Q. Were you home all the time, or were you absent any part of the time? A. Well, I have been at boarding school for the last six years, and I used to be home all during vacation. I would come home on Fridays and go back Sundays. Sometimes I would be home for a month at a time.

Q. Now, when you were at home, would you see your grandfather?

A. Yes, always.

273 Q. Were you ever asked by either of your parents, or by any one else, to exercise any watchfulness over your grandfather? —. No, never.

Mr. LAMBERT: That is objected to as irrelevant and immaterial.

Mr. WILLIAMSON: It has already been testified to by your people.

Q. Did you ever do that? A. No, I never watched him in my life.

Q. What did he do while you were home there, according to your observations, with respect to going out or coming in? A. Why, he would go and come whenever he felt like it.

Q. Have you seen your grandfather drink anything? A. Yes, he drank beer.

Q. Did you ever see him drink anything but beer? A. Nothing else except beer, milk and lemonade.

Q. When any of his children or any one else called to see your grandfather, did you stay in the room during the visits at your home? A. I would stay in there to talk to them a while. I never stayed to listen to what any one was ever saying.

Mr. WILLIAMSON: That is all.

Mr. LAMBERT: No cross examination.

THERESA WATERS.

Subscribed before me this 20th day of May, 1909.

J. ARTHUR LYNHAM, *Examiner*.

274 Thereupon—

JOHN E. WATERS, called as a witness on the part of the complainant, in rebuttal and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. WILLIAMSON:

Q. How old are you, Mr. Waters? A. Seventeen.

Q. You are the son of Mr. and Mrs. John O. Waters? A. Yes sir.

Q. Were you at home generally, or were you away at school? A. Home.

Q. Did you see anything of your grandfather, John Shea? A. Yes sir.

Q. What did he do with respect to going and coming? A. He went and came when he wanted to.

Q. Did he ever send you on any errands for anything? A. Yes sir.

Q. What would he send you for? A. Send me for cigars and buttermilk, and get lemons, and so forth.

Q. Did you ever exercise any watch over your grandfather's movements? A. No, sir, never in my life.

275 Q. Anybody ever request you to do that? A. No sir.

Q. Whenever anybody called to see him and you were at home, did you stay in the room? A. No sir.

Q. Did you ever see your grandfather drink? A. Drink beer occasionally and buttermilk.

Q. Did you ever see him drink anything else? A. No sir.

Cross-examination.

By Mr. LAMBERT:

Q. What did he do with the lemons he had? A. He drank lemonade with them.

Q. Then you did see him drink something else? A. Lemonade, that is what he drank.

JOHN E. WATERS.

Subscribed before me this 18th day of May, 1909.

J. ARTHUR LYNHAM, *Examiner*.

Thereupon—

JOHN O. WATERS, called as a witness on the part of the complainant, in rebuttal, and being first duly sworn, was examined and testified as follows:

276 Direct examination.

By Mr. WILLIAMSON:

Q. You are the husband of Mrs. Maria Waters and the son-in-law of Mr. Shea? A. Yes sir.

Q. How long have you known Mr. Shea? A. 23 years, I guess.

Q. Was that since your marriage? A. Oh no, sir, about four years before I got married.

Q. Before your marriage, where did Mr. Shea live? A. 325 Maryland Avenue, southwest.

Q. And did you and your wife and family live in the same house? A. Lived there for a while, and we moved away for two or three months, and went back again.

Q. Been living there ever since? A. Yes sir.

Q. After the death of his wife, where did Mr. Shea live? A. The same house, 325.

Q. What have you to say with respect to Mr. Shea's habits as to drinking? A. He used to drink beer, the same as any other ordinary man would.

Q. Drink anything else but beer? A. Never saw him drinking anything else, any other kind of intoxicating stuff, outside of beer.

Q. Did he drink any other liquid? A. He would drink a
277 good deal of buttermilk and lemonade, and such stuff as that; never saw him drink any whiskey of any kind.

Q. Have you been in the city continuously during the last four or five years of Mr. Shea's life? A. Me?

Q. Yes. A. Yes sir.

Q. Did he eat his meals with your family? A. Yes sir.

Q. You saw him then? A. Every day, sir, except a little while he was away, up in the Blue Ridge Mountains, or down to Colonial Beach.

Q. Did you talk with him? A. Yes sir, every day.

Q. What would you talk with him about? A. Oh, lots of different things.

Q. Was he a man who read the paper or books? A. Yes sir, a good deal; read the papers a good bit.

Q. Did you ever have any talk with him about what he read in the papers? A. Well, he used to read about—watch the papers sometimes for the Heyburn Bill for the buying of the property south of the Avenue, and anything else he would notice in the paper, he would always mark it in the paper with a pencil and bring it down to my wife to read it.

Q. You mentioned the bill in reference to the purchase
278 of real estate south of the Avenue. Did he talk about that at all? A. Yes, he used to talk about that a good deal.

Q. What did he say about it, if you remember? A. Well, he always said he was in hopes that bill would pass before his wife died. Said he hoped he would live to see the day when it would pass.

Q. Did Mr. Shea keep a bank account? A. Yes sir.

Q. What bank? A. Washington Loan and Trust.

Q. Who drew his checks? A. Why, he usually drew his own checks, as a general thing.

Q. Did he go to the bank himself or how did he get them cashed? A. I don't remember him ever going to the bank himself.

Q. How did he get them cashed? A. Well, I had a good many checks cashed for him, and my daughter had some cashed for him, and my wife and boy.

Q. Do you know anything about Mr. Smith having some cashed for him? A. Yes, he used to write them and Mr. Smith used to have them cashed for him.

Q. It has been testified here, Mr. Waters, that you had business
279 transactions with Mr. Shea with respect to \$500. A. Yes sir, I got \$500 from him.

Q. When did you get that money from him? A. I got it in June, 1905.

Q. And in what way did you get it from him—I mean how did he pay it to you? A. He paid it to me by check, sir.

Q. On what bank? A. Washington Loan and Trust.

Q. Now, what did you do with respect to the repayment of that money, if anything? A. I paid him back every dollar, two dollars for one, I guess.

Q. How did you make the payments to him? A. I made a good many of them to him by check, and some of them by cash.

Q. Have you any checks there to him? A. I have three here, sir.

Q. Produce them, please.

(The witness produces three checks, dated August 17th, 1905, for \$50, September 9th, 1905, for \$50, and September 16th, 1905, for \$75, all payable to the order of John Shea.)

Mr. WILLIAMSON: I offer these checks in evidence.

(And the same are filed by the Examiner, marked Complainant's Exhibits Nos. 7, 8 and 9, respectively.)

A. I also sent \$100——

Q. One minute now. These checks bear Mr. Shea's endorsement?

A. Yes sir.

280 Q. Do you know his handwriting? A. Yes sir.

Q. And what did you do with them after he gave them to you? A. I cashed one of them, I think—no, I didn't; there is an endorsement—a woman named Cahill, and another one named Pierson, and my boy cashed the other one for him. One of them has my boy's endorsement on it.

Q. Now, how much money did you send to him by any one else?

A. I sent a hundred dollars down by Ed Shea on two different occasions, \$50 each time.

Q. Do you know whether Mr. John Shea received that \$100? A. I am sure he received it, because he went down and came back on the boat the same night.

Q. Did Mr. Shea ever say anything to you about whether he received it? A. Yes sir, he told me when he came back he got the money.

Q. Did you send money by anybody else, except Edward Shea?

A. Yes sir, Daniel Sullivan.

Q. Is he the one who testified here? A. Yes sir, a plate printer in the Bureau.

Q. How much did you send by him? A. Sent \$165.

Q. Now, the balance of the \$500 was paid in what way? A. Paid \$5 and \$10 at a time to him.

281 Q. You can state whether or not it was fully paid? A. Yes, more than fully paid.

Q. I want you to come down now to the fall of 1906, when a payment came due on this policy that has been referred to in this suit. It is in evidence here that Mrs. Kopp gave you a check for \$37.50?

A. Yes sir.

Q. How much was that payment? A. \$150, sir.

Q. Have you anything from the company to—— A. (Interposing.) Here is a receipt, sir, and that is the September payment.

Q. Is this the notice from the company and the receipt? A. Yes sir, that is the notice. We sent that money and we got that receipt back.

Mr. WILLIAMSON: I offer that in evidence.

(And the same is filed by the Examiner, marked Complainant's Exhibit No. 10.)

Q. Where did you get the money to pay that \$150, other than the \$37.50 that Mrs. Kopp paid? A. I got \$37.50 from Mrs. Jewell.

Q. And who paid the remaining \$75? A. I paid the \$75, sir.

Q. When did the next premium become due? A. On December 5th.

Q. How much was that? A. \$135.50.

Q. Prior to December 5, when this was paid, did you have any

conversation with any of the children of John Shea with respect to the payment of it? A. Yes sir.

Q. Who did you have a conversation with? A. With Mrs. Kopp on December 3d, 1906.

Q. In what way did you have that conversation? A. Over the telephone, sir.

Q. Just tell us now what that conversation was. A. I called Mrs. Kopp up and told her her father's life insurance was due, and I asked her what she was going to do about it, and she said "I am not going to pay another damn cent."

Q. Did you speak to any of the other children? A. Yes sir, I also called Mrs. Jewell.

Q. And what did Mrs. Jewell say? A. Mrs. Jewell said she was through with it.

Q. What did you do then, Mr. Waters? A. Well, that was the evening of December 3d, and on the morning of the 4th I told Mr. Shea his life insurance was due, and asked him what he was going to do about it, and he said it had to be paid. So I paid the policy.

Q. Let me ask you in that conversation was anything said as to the children paying it? A. Mr. Shea says "Well, this policy is"—

Mr. LAMBERT: I object to any conversation with Mr. Shea in reference to any alleged contract or payment on this subject at all, as improper, irrelevant and immaterial, he being dead.

A. "This policy is 27 or 28 years old," he said, "it has got to be paid." He says "I have been in there a long time; I don't want the policy to drop." And he said—he told me if I would pay the policy that he would see that my wife got the benefit of it.

Q. Did Mr. Shea know at that time what the other children were doing in the matter? A. Yes sir, he knew there was two of them that could have paid it but they would not pay it, and the others claimed that it had been running too long, and said they were tired of paying it.

Q. After that conversation with Mr. Shea, did you pay the December assessment? A. Yes sir.

Q. Is this the receipt for that? A. Yes, this it is, December 5, 1906.

Q. How much is that? A. \$135.50.

Mr. WILLIAMSON: I offer that in evidence.

(And the same is filed by the Examiner, marked Complainant's Exhibit No. 11.)

Q. Now, just state what assessments were paid by you after that time—just give us the dates and amounts. A. Well, it was on March 1st, \$141.50.

Q. March 1st what—give the years? A. 1907; June 4th, 1907, \$149.50; September 5, 1907, \$129; December 3d, 1907, \$127.50; March 5, 1908, \$129.50; June 4, 1908, \$159.50. That was the last payment.

Q. Who furnished the money with which those payments were made? A. My own money, sir.

284 Q. Any of the children of John Shea, outside of your wife, contribute to any of those payments? A. Not a penny.

Q. Now, after this conversation with Mr. Shea on December 4th, 1906, which you have related, do you know what he did? A. Yes sir, he went out a couple of days afterwards and he came back with a sealed envelope and gave it to me and told me to keep it; that it was his will, which I gave to you, and you filed it in the Court afterwards; a few days afterwards he told me——

Q. One minute now. Was that envelope opened from the time you got it to the time it was filed in court? A. No sir, never from the time it left his hands until you opened it.

Q. Now what happened after he brought you the will? A. Well, a few days afterwards he said he was not satisfied with what was in the will, and we had to pay the entire policy, and he was going to fix it so my wife would have the benefit of it.

Mr. LAMBERT: I object to this as being in contravention of Sec. 1054, I think it is, of the Code, that prohibits conversations by a surviving party as having been had with the deceased.

Q. What did he do after having made that statement? A. Well, he asked me for the policy, and I got the policy and gave it to him. He brought it back a few days afterwards, with two assignments, and it was sent to the life insurance company, and sent back to us with one of the assignments pasted on, duplicate assignment.

285 Q. And did that policy remain in that condition from that time up to the time of his death? A. Yes sir, remained in that condition up to the time of Mr. Shea's death.

Q. Now, Mr. Waters, you have stated your acquaintance with Mr. Shea and your means of observation, you may state whether, in your opinion, from the knowledge you acquired in this way, whether Mr. Shea was competent in December, 1906, to enter into a valid deed or contract? A. He knew exactly what he was doing all the time.

Q. Did you, or your wife in your presence, give any direction to your children, or any one else, as to exercising watchfulness over John Shea? A. No sir.

Q. Did that happen? A. Not to my knowledge, sir; nobody had ever watched him that I know anything about.

Q. What liberty of action did Mr. Shea have with respect to going and coming? A. He could go of his own free will and accord, sir; go and come when he got ready; nobody could stop him.

Q. Did he go? A. Yes sir.

Q. Did he take trips away from the city at any time? A. Well, he went up to Harpers Ferry, I believe, one time, up in the mountains some place, and he went to Colonial Beach.

Q. It has been testified that he was at Colonial Beach in
286 the summer of 1906. Do you remember how long he stayed there? A. I think he stayed about 6 weeks; 5 or 6 weeks; I would not be sure.

Q. Did you or your wife receive any letters from him during his stay there? A. Yes, sir, received letters asking for money.

Q. It has been testified to in this case that Mr. Shea had no money, and you have already testified that he had a bank account.

Do you know whether he had any money on deposit with Mrs. Kopp? A. Yes.

Q. Do you know out of what fund that came? A. It came from the proceeds of the selling of the real estate, I think.

Q. You mean by that, the trustees Lambert and Williamson? A. Yes sir, you and Mr. Lambert.

Q. Do you know how much Mr. Shea put in her hands then? A. I think it was something like \$3200, if I ain't mistaken. I think that was the amount. I would not be sure about that. Mr. Shea got more than any of the children got.

Q. It has been shown that Mr. Shea gave his daughter Alice \$1100. Was that given to her after the deposit with Mrs. Kopp, or was that paid to her by the trustees? A. Well, I don't know, Mr. Williamson; I could not tell you that. I think it was paid by the trustees, though, I think.

287 Q. Now, this money that Mrs. Kopp had, how would he draw it from her when he wanted it? A. Well, she used to come down to the house, and he would tell her how much he wanted, and he used to telephone over to her and tell her how much he wanted, and she would bring it down to him.

Q. Do you know whether or not that fund was exhausted at the time of his death? A. I don't think it was entirely exhausted, no sir.

Q. What visits, as far as you know, were made by Mrs. Mulloy to her father, in the last two or three years of his life? A. I think in the last three years, I don't think Mrs. Mulloy saw him more than three times.

Q. Up to the time of the sale of the property by the trustees did Mrs. Mulloy reside in the same house? A. She lived there a while, yes sir, and then she moved out.

Q. After she moved out how many times, according to your knowledge, was she there? A. Well, from the day she moved out, I don't remember the time, but she never was in our house until her brother died, and her brother died three years ago this coming February, I think.

Q. Well, after that, how many times was she there? A. I think she has been there about three times since. She came there when her father was sick. She was there about five times between the death of her brother and the death of her father; not over that, I know.

288 Q. Mr. Waters, it has been testified to here, and some emphasis seems to be laid upon that, that Edward Shea one of the children of John Shea, died in your house of asphyxiation? A. Yes sir, that's right.

Q. And it becomes necessary to ask you the circumstances of his death. Just tell us briefly. A. The circumstances of his death?

Q. Yes. A. He was found dead down stairs in the room, over-come by gas.

Q. Now, what room did he occupy? A. He occupied the room that we call the sitting room, on the first floor, sir; he never would go upstairs, because he used to go out about 4 o'clock in the morning to

work, and he said he stayed down stairs because he would not disturb the people when he got up in the morning.

Q. Was he living with his wife at that time? A. No, sir; his wife was the last one seen with him that night?

Q. Well, was she living with him that night? A. Yes sir, she *sued* to come around to the house to see him, but they were not living with us. She was living at her home and he was living with us.

Q. Did you discover his body? A. Yes sir.

Q. How? A. I woke up in the morning and noticed that odor of gas, and I went to the boy's room and the girl's room, and went back, and I said to my wife it is an awful——

289 Q. No, tell us what you did? A. I told her "It's an awful odor of gas around here," and I went down in the kitchen, and came back upstairs again. I always used the back stairs; very seldom go down the front, and I opened the door and struck his leg, and he was lying out there dead.

Q. How was the gas escaping? A. The gas thing was turned on, one of the keys; was not turned on full; it was nearly turned off.

Q. How long had Mr. Edward Shea been living at your house? A. Why, he had been living there off and on ever since I have been living there, sir.

Q. What were your relations with him and those of your wife? A. Always very good sir.

Q. After his death a child was born to his wife, was it not, shortly after? A. Yes, sir, six months after his death, I think, a baby was born.

Q. What become of that child? A. We adopted the child. We had the child since it was 9 days old. Mrs. Shea sent us a note stating that "If you want this——"

Mr. LAMBERT: I object.

Q. You need not tell us what she said.

Mr. WILLIAMSON: I just want to offer in evidence here the papers and proceedings in the Supreme Court of the District of Co-
290 lumbia in the matter of the adoption of John Edward Shea by John O. and Maria Waters.

Mr. LAMBERT: I object on the ground that it is irrelevant and immaterial.

Cross-examination.

By Mr. LAMBERT:

Q. Mr. Waters, when were you married? A. Married on the 4th of December, 1889, I think, sir.

Q. Did you live with Mr. Shea from the time you were married up to the time of his death? A. Did I live with him continuously?

Q. Yes. A. No sir.

Q. What interval did you not live with him? A. Well, I was out of town about nine months there at one time. Then I lived up on the Avenue, I think about two months and a half, or three months,

and then I think I lived in the adjoining house there about five or six months.

Q. Was your wife there all the time with Mr. Shea? A. Where?

Q. Living with him. A. Living with him?

Q. Yes. Q. How could she be living with him when she was living with me?

Q. I asked you. A. I am answering you, too.

Q. I didn't ask you how it could be done. I asked you if
291 it was a fact? A. No.

Q. How long did she live with her father? A. All the time I lived there.

Q. So with the exception of about a year and a half you lived with him and she lived with him, since 1889? A. Yes, sure.

Q. You spoke of an occasion when Mr. Shea was down at Colonial Beach. When was that? A. I don't know exactly, sir. It was three years ago this summer, I think.

Q. Do you know what year it was? A. I think it was 1907 or 1906.

Q. How long was he down there? A. Probably four or five weeks; probably six weeks; I would not be sure about the time.

Q. While he was down there, you said you sent him \$265. A. That is what I said, yes sir.

Q. Did Mr. Shea take anything down with him at all? A. I could not tell you that, sir; I don't know.

Q. Don't you know that? A. No sir.

Q. You said Mr. Shea came up and told you he had gotten the money you sent down by Ed Shea, is that true? A. When he came home he told us, yes sir.

Q. When he came home? A. Yes sir.

Q. Where was this insurance policy? A. Where was it?

292 Q. Yes. A. Over here in this safe deposit on the Avenue there, between 9th and 10th; I don't know what the name of it is.

Q. In whose safe deposit box? A. My box.

Q. How long had you had the custody of that policy? A. How long had I had the custody of that policy?

Q. Yes. A. Oh, I think about four or five years.

Q. How did you happen to get hold of it? A. It was given to me for safe-keeping, sir.

Q. So that you had it all during the time that the trustees in this case were paying money on it, didn't you? A. Yes sir.

Q. You also had possession of it during the time that the money was being paid by you and Mrs. Kopp and Mrs. Jewell, is that right? A. Yes sir.

Q. How much money did you pay altogether on that policy, aside from what you have contributed equally with the rest of the people? A. \$972.

Q. \$972? A. Yes.

Q. When was it that you say you first approached Mr. Shea about the idea of keeping up these payments? A. The 4th of December, 1906.

293 Q. December 4, 1906? A. Yes sir.

Q. Was that the day before or the day after you had the talk with Mrs. Kopp and Mrs. Jewell? A. The day after.

Q. At that time Mrs. Kopp and Mrs. Jewell contributed their part, didn't they? A. No sir, not that time; they contributed to the September payment.

Q. So that in September when it fell due, you didn't speak to him at all about it? A. Didn't speak to who?

Q. Mr. Shea. A. Didn't speak to him about it?

Q. Yes. A. I don't know whether I did or not.

Q. You have no recollection one way or the other, ha- —? A. No sir.

Q. You were satisfied in September to get a contribution from Mrs. Kopp and Mrs. Jewell and mail that on, without looking into the matter at all, or adjusting it with Mr. Shea, were you? A. I was not satisfied, Mr. Lambert, to get a contribution from them at any time. I tried to persuade them to pay it.

Q. But in September you took a contribution from them and said nothing to him? A. Well, the policy was due and had to be paid.

Q. I am asking you for facts, now. A. I am giving you facts, too.

294 Q. Did you or did you not?

A. I don't remember, sir; I couldn't tell you.

Q. You didn't think it was of sufficient moment in September to speak to Mr. Shea about it, so you can't remember whether you did talk to him or not, is that correct? A. I guess that is about right, sir.

Q. Now, in December you say you had a further talk with Mrs. Kopp and Mrs. Jewell? A. On the 3d day of December, 1906, sir.

Q. Did you call them or did they call you up? A. I called them up, sir.

Q. Did you show them the policy? A. How could I show them the policy over the telephone? Mr. Lambert.

Q. I am asking you if you showed it to them. A. I said how could I show it to them over the telephone.

Mr. WILLIAMSON (to the witness): Answer the question, that is the easiest way.

A. No, I didn't show it to them.

Q. On the 4th of December you had this conversation with Mr. Shea, and then it was that you made the proposition to him that you would keep it up if he turned it over to your wife, did you? A. No sir, he made the proposition to me.

Q. He volunteered that, did he? A. Yes sir.

Q. When was it he made his will? A. I don't know. Some time in December.

295 Q. Was it after or before that conversation you speak of on the 4th of December? A. I think it was after.

Q. You didn't know anything about that, I suppose, until he brought you back the paper? A. No sir.

Q. Handed it to you at the house, did he? A. Yes sir.

Q. Tell you what was in it? A. Didn't tell me exactly what was

in it. He told me it was the will. On the back, as well as the top, was "The will of John Shea."

Q. What exactly did he tell you was in the will? A. He didn't tell me at all, sir, what was in it.

Q. Did you read the will? A. Did I read it?

Q. Yes. A. The will was sealed up.

Q. I asked you if you read it? A. No sir.

Q. When was the first time you ever saw the will? Q. The day he handed it to me in the sealed envelope.

Q. What did you do with it then? A. Kept it.

Q. Where did you keep it? A. Kept it in the safe.

Q. When was the first time you ever read the will? A. I don't know as I have ever read the will.

Q. Don't know that you have read it yet, ha? A. I
296 don't remember ever reading it.

Q. Until it was unsealed, ha? A. Yes, Mr. Williamson unsealed it. Mr. Williamson filed it in court.

Q. Why was it you reported that will lost to the court? A. I didn't report the will lost to the court.

Q. You didn't? A. I don't think I did.

Q. Your wife reported it lost to the court? A. My wife didn't know where it was.

Q. I say didn't she report it lost? A. I don't know, sir.

Q. Did you tell your wife that you had the will? A. Did I tell her?

Q. Yes. A. I don't know whether I did or not.

Q. You just took that paper or envelope with what purported to be a will in it and put it in your safe deposit box, along with the insurance policy, did you? A. No sir.

Q. What did you do with it? A. I put it in my own safe.

Q. Put it in your own safe? A. Yes.

Q. You didn't keep it with the policy? A. No.

Q. Where was that safe located? A. At 917 E Street.

Q. At your house or at your office? A. I live at 325
297 Maryland Avenue.

Q. Well, what is at 917 E street? A. It is supposed to be a plumbing shop; I don't know what it is.

Q. A shop run by you? A. I hope so.

Q. When was it you were first called on for this insurance policy? A. When was I first called on for it?

Q. Yes. A. Why, I think—I don't know; it has been some time ago. I got a notice, I think, from Mr. Williamson, that you wanted to see the policy.

Q. I am not talking about that. I am talking about when you were first called on for the policy in connection with this alleged assignment? A. Some time in December; some time about the 10th or 11th. I don't know; somewhere between the 5th and 10th of December.

Q. Who asked you for it then? A. Mr. Shea.

Q. Did you get it? A. Yes sir.

Q. Did you give it to him? A. Yes sir.

Q. What did he do with it? Q. He came up here to the lawyer's office.

Q. Did you come with him? A. No sir.

298 Q. Who brought him up? A. Came by himself.

Q. When did you next see the policy? A. When he brought it back with the assignment on it; not with the assignment on it, but with the assignment to be sent away.

Q. You say he came up to a lawyer's office. What lawyer's office do you mean? A. Mr. Williamson's.

Q. Mr. Williamson was your lawyer also, was he not? A. Yes, but I didn't know where he was going.

Q. I asked if Mr. Williamson was not your lawyer? A. Always been mine, yes sir.

JOHN O. WATERS.

Subscribed before me this 19th day of May, 1909.

J. ARTHUR LYNHAM,
Examiner.

MR. WILLIAMSON: I just want to offer these two deeds in evidence, for the purpose of showing the date of those transfers.

(And the same are filed by the Examiner, marked Complainant's Exhibits Nos. 12 and 13, respectively.)

Thereupon—

IRVING WILLIAMSON, being first duly sworn, was examined and testified as follows:

I feel compelled to make a brief statement in consequence of testimony volunteered here by Mr. and Mrs. Kopp, with respect
299 to a conveyance made by Mr. Shea of certain real estate to his daughter, Maria Waters. This deed was made in April, 1901. It was executed in my office by Mr. Shea, before Mr. Lynham here, who was the notary. There seems to be an effort on the part of the Koppes to make it appear that I had no right to draw that conveyance. I had represented Mr. Shea in other matters, and say now that there was no impropriety whatever in my making it.

Mr. Kopp has testified that shortly after—as I remember—that shortly after the making of that deed he came to see me and undertook to find some fault with me for having drawn it. I want to say here that that statement of his that he ever undertook to find fault with me about that, or anything else, is absolutely false, as is his statement that I made some coarse remark to him which *it* put into the record. The only conversation that I ever remember with Mr. Kopp at any time after the making of that deed was when he sought to have me interest myself or take stock in some patent paint that he had, which I declined to do, and that is the only method I have of accounting for his animosity which he seems to display against me.

Cross-examination.

By Mr. LAMBERT:

Q. Mr. Williamson, you, I believe, purchased the tax title to some of this property, or tax deeds, for Mr. Waters, during the time Mr. Waters was administrator of the estate? A. Oh, I forgot to ask Mr. Waters. I am glad you mentioned the fact. I must ask Mr. Waters about it. I never purchased anything for Mr. Waters. The fact is, as I remember it, Mr. Lambert, that Wiltsie, the man
300 in Rochester, New York, who deals in tax titles, had acquired a tax certificate, and this certificate was taken up from him so as to prevent it from becoming irredeemable in his hands.

Q. But there was one tax certificate obtained from the District which was purchased by Mr. Waters? A. Well, I don't know anything about that. If he did it, he did it to protect the property.

Q. You didn't officiate in doing that for him? A. No sir.

Q. Do you remember showing that tax certificate to Mr. Kopp when he came to your office the day he refers to? A. I don't remember showing any tax certificate to Mr. Kopp, for I never remember having manual possession of it. I never obtained it from Mr. Waters. I may have mentioned it to Mr. Kopp; I don't know whether I did or not.

IRVING WILLIAMSON.

Subscribed before me this 19th day of May, 1909.

J. ARTHUR LYNHAM,
Examiner.

Thereupon—

JOHN O. WATERS, having been heretofore duly sworn, was recalled and further interrogated.

Direct examination.

By Mr. WILLIAMSON:

Q. It has been testified here, Mr. Waters, and I forgot to ask you about it, that you bought some property here at tax sale, some of the Shea property. State whether or not the property that you
301 bought was in the—the certificate that you bought was in the hands of anybody else? A. It was in the hands of Mr. Wiltsie, of Rochester; yes, sir. Mr. Nicholson got that for me.

Mr. WILLIAMSON: Now, I offer in evidence the deed from John Shea and wife to Margaret Kopp, trustee, of October 14th, 1898, and from Margaret Kopp, trustee to Maria Shea, of the same date, both recorded October 17th, 1898, among the land records.

(And the same are filed by the Examiner, marked Complainant's Exhibits Nos. 12 and 13.

Cross-examination.

By Mr. LAMBERT:

Q. One of the tax certificates to this property was purchased by you from the District, in your own name, wasn't it? A. Just one small one to protect a piece of property, to keep Wiltsie from getting it, sir. Wiltsie was about to get a deed on the property, and I taken it and stopped him from doing it.

Q. And you required it to be redeemed with interest in full, didn't you? A. Certainly, yes sir.

By Mr. WILLIAMSON:

Q. You had to pay him the 12 per cent interest, didn't you? A. Yes sir. I am talking about this one I got Mr. Nicholson to buy for me, just to protect the house, to keep Wiltsie from getting a deed for it.

By Mr. LAMBERT:

302 Q. Mr. Waters, do you know about this piece of property that Mr. Shea turned over to your wife? A. Know a little something about it, yes sir.

Q. What do you know about it? Q. What is it you want to know about it?

Mr. WILLIAMSON: I object to this as immaterial.

Q. Don't you know that that piece of property was simply a piece of property that, by an omission of Mr. Cull's had not been conveyed with the whole? A. No sir.

Q. When the taxes came due and you talked to Mr. Shea about it, didn't he tell you that he didn't own any property? A. I think he discovered it in the tax book and went up and had it looked up himself. I think that is the way it was found out. It all belonged to him at one time, I think.

Q. As a matter of fact you looked it up, didn't you? A. No, sir, I didn't have anything to do with looking it up.

Q. Didn't you discover it in the tax book and look it up and get it for your wife? A. No sir. Somebody else discovered it instead of me.

JOHN O. WATERS.

Subscribed before me this 19th day of May, 1909.

J. ARTHUR LYNHAM, *Examiner*.

Mr. WILLIAMSON: That closes our case.

303 THURSDAY, May 13th, 1909—3.30 o'clock p. m.

Met, pursuant to notice, at the office of the Examiner, to resume the taking of testimony on the part of the complainant in rebuttal.

Present: Irving Williamson, Esq., Solicitor for the Complainant; Wilton J. Lambert and Rudolph H. Yeatman, Esqrs., solicitors for the defendants, and the Examiner.

Whereupon—

JOHN O. WATERS, having been heretofore duly sworn, was recalled and further interrogated.

Direct examination.

By Mr. WILLIAMSON:

Q. Mr. Waters, I forgot to ask you when you were on the stand, without having seen the testimony of Mr. and Mrs. Kopp written out, what you have to say with reference to Mrs. Kopp's statement that, in substance, she said to you she would pay future assessments on the policy providing proper papers were executed by the children of John Shea. A. Mrs. Kopp never spoke a word to me about that, not a word, sir. She never spoke to me after the last payment was made in September; never spoke a word, up until the 3d day of December, when I tried to get her to continue the payments, and she absolutely refused to do it.

Q. You have testified that Mr. Shea brought you an envelope—sealed envelope—containing his will, and gave it to you for safe-keeping, and that you put it in your safe at your place of
304 business? A. Yes, sir.

Q. Was there any delay in producing the will after his death, and if so, why? A. Well, Mr. Shea brought me that will, and we knew there had been a will made, but it was misplaced or mislaid in some way; and it never occurred to us to look it up until Mrs. Kopp filed a paper asking to be appointed administrator. Then we began to search for the paper. We looked all over the house, through Mr. Shea's trunk and through some papers he had there, and we couldn't find it; and I knew that I had had that paper, and so I went to the office the next day and began a search in my safe, and I found the paper there, and the will was produced.

Cross-examination.

By Mr. LAMBERT:

Q. Do you mean to say, Mr. Waters, that Mr. Shea gave you that paper and told you it was his will, and that you put it away and that you forget all about what you had done with it? A. Yes sir.

Q. Is that what you mean to say? A. That is what I mean to say, yes sir.

Q. When Mrs. Kopp made this contribution in September 1906, don't you recollect that she told you then that she wanted this thing put in legal shape, so that it would be no question about the interests of the parties in the proceeds of the policy, when it would be payable? A. Never spoke a word to me, sir, about it.

Q. Didn't say anything to you about it when she gave you
305 that \$37? A. No sir.

Q. Didn't she ask you to bring the policy or send a copy of it to her attorney, to have it fixed up so there would be no future trouble about it? A. I agreed to do that, sir.

Q. I say didn't she do that? A. I got word from Mr. Williamson that you wanted to see the policy and I brought it to you.

Q. After September, 1906? A. I can't remember the date, sir, but I remember bringing the policy up for you to take a copy of it or to allow you to read it.

Q. Don't you know that was at the time that the money was put in the trustee's hands, years ago? A. I don't remember, sir; I don't remember that. I don't remember Mrs. Kopp ever speaking a word to me after getting that check. The only conversation I ever had with her was over the telephone, which I have already testified to.

Q. I am talking now just prior to giving that check to you, or mailing that check to you, don't you remember she told you she wanted the matter shaped up legally so there would be no future trouble about it? A. No sir.

Q. Never told you anything about that? A. No sir.

Q. Are you positive about that? A. Sure.

Q. Did she ask you for that then? A. Never asked me for the policy in her life.

306 Q. Didn't tell you to send it to me, then? A. No sir.

Mr. Williamson asked me to bring it up. I brought the policy up to allow you to read it over to take a copy of it.

Q. That was prior to the \$300 apiece? A. That was after the \$300 was put up.

Q. About the same time, wasn't it? A. I don't know; I can't remember the exact time.

Q. It was not in September, 1906, was it? A. No, I don't think it was.

Q. Now, just prior to the payment during December, 1906, did not Mrs. Kopp solicit you, or Mr. Kopp solicit you, one or the other, to get this policy out and have it fixed up so that there would be no trouble about the payments? A. No sir, the only conversation I had with Mr. Kopp was he used to come down to the house, and he would see the amount of the policy, and he used to kick about it getting larger and larger all the time; said he was getting tired of paying it, and was not going to pay it any longer.

Q. Didn't you tell Mr. Kopp and Mrs. Kopp that you did not intend to pay any more? A. Me?

Q. Yes. A. No sir.

Q. Tell them that you could not afford to pay? A. No sir.

Q. Did not? A. No sir. The shoe is on the other foot; they always kicked about it.

JOHN O. WATERS.

307 Subscribed before me this 19th day of May 1909.

J. ARTHUR LYNHAM,
Examiner.

Memorandum.

For Complainant's Exhibit No. 1, see deposition of Thomas F. Lawrence, at page 72 of this transcript.

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COMPLAINANT'S EXHIBIT No. 7.

WASHINGTON, D. C., *Sep.* 16, 1905. No. —.

The Washington Loan & Trust Company.

Cash Capital, \$1,000,000.

Pay to

The order of John Shea \$75 00

..... Seventy five Dollars

And charge the same to the
account of Book No. 22597.

JOHN O. WATERS.

[Across face:] Paid. Paid *Sep.* 18, 1905.

(Endorsed.)

John Shea.
John E. Waters.

309

COMPLAINANT'S EXHIBIT No. 8.

T. C. G. WASHINGTON, D. C., *Sep.* 9, 1905. No. —.

The Washington Loan & Trust Company.

Cash Capital, \$1,000,000.

Pay to

The order of John Shea \$50 00

..... Fifty Dollars

And charge the same to the
account of book No. 22597.

JOHN O. WATERS.

[On margin:] Good for \$50.00 when properly endorsed. The
Wash. Loan & Trust Co., by Boyd Taylor, Asst. Treasurer.[Across face:] Paid. Paid *Sep.* 14, 1905. Not over fifty dollars
\$50\$.

(Endorsed.)

John Shea.
Mary C. Cahill.American National Bank
All Previous
Sep. 14 19—
Endorsements Guaranteed
of Washington, D. C.

Pay to the Order of
Any Bank, Banker Or Trust Co.
The Bank of Westmore-
Colonial Beach, Va.
H. W. B. Williams, Cashier.

310

Pay to the order of
Any Bank or Banker
All Prior Endorsements Guaranteed
Sep. 13 1905
Merchants' National Bank,
Richmond, Va.
John F. Glenn, Cashier.

311

COMPLAINANT'S EXHIBIT No. 9.

(G.) WASHINGTON, D. C., *Aug.* 17, 1905. No. —.

The Washington Loan & Trust Company.

Cash Capital, \$1,000,000.

Pay to

The order of John Shea \$50 00

..... Fifty Dollars

And charge the same to the
account of Book No. 22597.

JOHN O. WATERS.

[Across face:] Paid. Paid Aug. 23, 1905. Good for \$50.00
when properly endorsed. The Wash. Loan & Trust Co., by
Harry G. Meem, Treasurer. Not over fifty dollars \$50\$.

(Endorsed.)

Lewis Pierson.
John Shea.

American National Bank
All Previous
Aug. 23 1906

Endorsements Guaranteed
of Washington, D. C.

Pay to the order of
Any Bank or Banker,
All Prior Endorsements Guaranteed
Aug. 22 1905
Merchants' National Bank,
Richmond, Va.
John F. Glenn, Cashier.

312

Pay to the Order—
Any Bank, Banker or Trust C—
The Bank of Westmoreland
Colonial Beach, Va.
H. W. B. Williams, Cashier.

COMPLAINANT'S EXHIBIT No. 10.

Hartford Life Insurance Company.

HARTFORD, CONN., *August 2nd*, 1906.

John Shea, 325 Maryland Ave. S. W., Washington, D. C.:
10-50963.

This Call which will be due Sept. 1st, 1906, is made to meet 105 Deaths (as shown by accompanying list), Benefits \$329,000 and expenses on your policy as follows:

For Mortality Call.....	\$150.
“ Quarterly Dues to Dec. next.....	7.50
Credit	\$..... 157.50
Dividend: to be applied if payment be made.....	7.50
Amount due	\$150.00

Payment will not be accepted later than *Sept. 5, 1906*, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including, *Sept. 15, 1906*.

Unless the payment called for by this notice shall be paid to the Company at its Home Office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to

HARTFORD LIFE INSURANCE COMPANY.

Make all remittances by Draft, Check, P. O. or Express Money Order when possible. Letters containing currency must be registered.

See Over for Special Notice.

Special Notice of Quarterly Call No. 112.

Your Next Quarterly Call will fall due and be payable Dec. 1, 1906.

Special Notice.

If the payment of the above Quarterly Call is not received at this office on or before *Sept. 5, 1906, the last day allowed for payment in the above notice, a second notice will be mailed to the policyholder by registered letter, giving until *Sept. 20, 1906, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *Sept. 5, 1906, will be obliged to pay this fifty cent fee in order to have the policy unconditionally reinstated.

After *Sept. 20, 1906, the limit allowed for payment under the registered notice, the Company reserves the right to require a medical examination as a condition of re-instatement.

**If residence is on or west of the meridian of Salt Lake, Utah, ten days' additional time is allowed.*

315 COMPLAINANT'S EXHIBIT No. 11.

Hartford Life Insurance Company.

HARTFORD, CONN., *November 1st, 1906.*

John Shea, 325 Maryland Ave., S. W., Washington, D. C.:

10-50963.

This call which will be due Dec. 1st, 1906, is made to meet 116 Deaths (as shown by accompanying list), Benefits \$273,500 and expenses on your policy, as follows:

For Mortality Call.....	\$128.—
“ Quarterly Dues to Mar. next.....	7.50
Credit	\$.....
Amount Due	\$135.50

Payment will not be accepted later than *Dec. 5, 1906*, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including *Dec. 15, 1906*.

Unless the payment called for by this notice shall be paid to the Company at its Home Office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Special Notice of Quarterly Call No. 113.

Your next Quarterly Call will fall due and be payable Mar. 1, 1907.

316 Return this notice with remittance payable to
HARTFORD LIFE INSURANCE COMPANY.

Make all remittances by Draft, Check, P. O. or Express Money Order when possible. Letters containing currency must be registered.

See Over For Special Notice.

Special Notice.

If the payment of the above Quarterly Call is not received at this office on or before *Dec. 5, 1906, the last day allowed for payment in the above notice, a second notice will be mailed to the policyholder by registered letter, giving until *Dec. 20, 1906, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *Dec. 5, 1906, will be obliged to pay this fifty cent fee in order to have the policy unconditionally reinstated.

After *Dec. 20, 1906, the limit allowed for payment under the registered notice, the Company reserves the right to require a medical examination as a condition of re-instatement.

*If residence is on or west of the meridian of Salt Lake, Utah, ten days' additional time is allowed.

317

COMPLAINANT'S EXHIBIT No. 12.

This indenture, Made this Fourteenth day of October in the year of our Lord, one thousand eight hundred and ninety-eight, by and between Margaret Kopp, Trustee, of the District of Columbia, party of the first part, and Maria Shea, of the same place, party of the second part, witnesseth, that the party of the first part, for and in consideration of Ten Dollars, lawful money of the United States of America, to her in hand paid by the party of the second part, receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the party of the second part, her heirs and assigns forever, the following described land and premises, situate, lying and being in the City of Washington District of Columbia, and distinguished as and being All of Lot numbered Eight (8), the Western Half of lot numbered Nine (9), and the Eastern Half of lot numbered Ten (10), all in Square or Reservation marked and lettered "C," together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right title, interest and claim, either at law or in equity, or otherwise however, of the party

of the first part, of, in, to or out of the said land and premises:
318 To have and to hold the said land, premises and appurtenances, unto and to the only use of the party of the second part, her heirs and assigns forever.

And the said party of the first part for herself and her heirs, executors and administrators, do hereby covenant and agree to and with the party of the second part, her heirs and assigns, that she the party of the first part and her heirs, shall and will warrant and forever defend the said land and premises and appurtenances unto the party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, or interest therein, by, from, under or through her or them or any of them.

And further, that the party of the first part and her heirs shall and will at any and all times hereafter, upon the request and at the cost of the party of the second part, her heirs and assigns, make and execute all such other Deed or Deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, her heirs or assigns, as the party of the second part, her heirs or assigns, or her or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the party of the first part has hereunto set her hand and seal on the day and year first hereinbefore written.

MARGARET KOPP, *Trustee*. [SEAL.]

Signed, sealed and delivered in the presence of—
FERDINAND SCHMIDT.

(Two Internal Revenue Stamps.)

319 DISTRICT OF COLUMBIA, *To wit:*

I, Ferdinand Schmidt a Notary Public in and for the said District, do hereby certify that Margaret Kopp party to a certain Deed bearing date on the Fourteenth day of October A. D. 1898, and hereunto annexed, personally appeared before me, in the said District the said Margaret Kopp being personally well known to me as the person who executed the said Deed, and acknowledged the same to be her act and deed.

Given under my hand and official seal, this Seventeenth day of October A. D. 1898.

[SEAL.]

FERDINAND SCHMIDT,
Notary Public, D. C.

(Endorsed.)

Received for record on the 17 day of October A. D. 1898 at 3.27 o'clock p. m., and recorded in Liber No. 2365 at folio 45 et seq., one of the Land Records for the District of Columbia, and examined by
H. P. CHEATHAM, *Recorder.*

320 COMPLAINANT'S EXHIBIT No. 13.

This indenture, Made this Fourteenth day of October in the year of our Lord one thousand eight hundred and ninety eight, by and between John Shea and Maria Shea, his wife, of the District of Columbia, parties of the first part, and Margaret Kopp of the same place, party of the second part.

Witnesseth, that the said parties of the first part for and in consideration of the love and affection which he the said John Shea bears to his wife the said Maria Shea and the further consideration of Ten Dollars in lawful money of the United States of America, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, her heirs and assigns, all those certain pieces or parcels of land and premises situate and being in the City of Washington, District of Columbia and known and distinguished as and being All of Lot numbered Eight (8), the Western Half of Lot numbered Nine (9), and the Eastern Half of Lot numbered Ten (10), all in Square or Reservation marked and lettered "C," together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof; and all the estate,
321 right, title, interest, claim and demand, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to or out of the said pieces or parcels of ground and premises.

To have and to hold the said pieces or parcels of ground and premises and appurtenances unto and to the use of the said party

of the second part her heirs and assigns In Trust to convey the same to Maria Shea her heirs and assigns.

And the said parties of the first part for themselves and their heirs, executors and administrators do hereby covenant, promise and agree to and with the said party of the second part her heirs and assigns, that they the said parties of the first part and their heirs, shall and will warrant and forever defend the said pieces or parcels of ground and premises and appurtenances unto the said party of the second part her heirs and assigns, from and against the claims of all persons claiming or to claim, the same or any part thereof, by, from, under or through them or either or any of them.

And further, that they the said parties of the first part and their heirs, shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part her heirs or assigns, make and execute all such other Deed or Deeds, or other assurance in law, for the more certain and effectual conveyance of the said pieces or parcels of ground and premises and appurtenances unto the said party of the second part her heirs or assigns, as the
 322 said party of the second part her heirs or assigns or her or
 their counsel learned in the law shall advise, devise or re-
 quire.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

JOHN SHEA. [SEAL.]
 MARIA SHEA. [SEAL.]

Signed, sealed and delivered in the presence of—

FERDINAND SCHMIDT.

(Two Internal Revenue Stamps.)

DISTRICT OF COLUMBIA, *To wit:*

I, Ferdinand Schmidt a Notary Public in and for the District aforesaid, do hereby certify that John Shea and Maria Shea, his wife, parties to a certain Deed bearing date on the Fourteenth day of October A. D. 1898, and hereunto annexed, personally appeared before me, in the District aforesaid, the said John Shea and Maria Shea being personally well known to me as the persons who executed the said Deed, and acknowledged the same to be their act and deed; and the said Maria Shea being by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her acknowledged the same to be her act and deed, and declared that she willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal, this Seventeenth day of October A. D. 1898.

[SEAL.]

FERDINAND SCHMIDT,
Notary Public, D. C.

323

(Endorsed.)

Received for Record on the 17 day of October A. D. 1898 at 3.26 o'clock P. M., and recorded in Liber No. 2365 at folio 41 et seq., one of the Land Records for the District of Columbia.

H. P. CHEATHAM, *Recorder*.

324

Answer of Defendant John Shea.

Filed Oct. 7, 1902.

In the Supreme Court of the District of Columbia.

Equity. No. 23513.

MARGARET KOPP et al.

vs.

JOHN SHEA et al.

The separate answer of John Shea, one of the defendants in the above entitled cause, respectfully represents:

1-2. The allegations in the first and second paragraphs of the bill of complaint are admitted.

3. It is true that Maria Shea, wife of this defendant, departed this life intestate, as alleged in said bill, and that she was seized of the real estate described in the third paragraph thereof. The incumbrance referred to in said paragraph covers part of lot 13 in square 535, lot 10 in square 582, and the West half of lot 9 in Reservation C. The names of the children of said Maria Shea are correctly set forth in said paragraph, and they are all of full age.

4. It is true that taxes on said property are in arrears in a considerable amount, but the major portion thereof remained unpaid at the time of the death of said Maria Shea. Immediately thereafter this defendant, although entitled to the entire income of said estate, allowed the same to be divided into seven equal parts, of which

325 he took one, and each of his six children took a share in the same amount. This defendant believes that the interest of his children will be promoted by a sale of said property, and for that purpose he consents that his estate by the c-urtesy may be sold and commuted, he being of the age of seventy years.

And having fully answered, &c.

JOHN SHEA.

IRVING WILLIAMSON,
Sol'r for Deft.

DISTRICT OF COLUMBIA, ss:

John Shea, being first duly sworn, says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof; that the facts therein stated of his own knowledge are true,

and those therein stated upon information and belief he believes to be true.

JOHN SHEA.

Subscribed and sworn to before me this 19th day of September, A. D. 1902.

[SEAL.]

GEORGE P. CHASE,
Notary Public, D. C.

326 *Decree Distributing Proceeds of Insurance Policy.*

Filed Jun- 18, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS, Complainant,

vs.

MARGARET KOPP et al., Defendants.

Upon consideration of the original bill of complaint, the answers of the defendants thereto, and the cross-bill of complaint of the defendants, Margaret Kopp and Annie Mulloy, cross-complainants, filed in the above-entitled cause; and upon consideration of the testimony in support of said pleadings, and exhibits filed with said testimony, and the cause having been argued and submitted by counsel for the respective parties,

It is, by the Court, this 18th day of June, 1909, adjudged, ordered and decreed that the prayers of the original bill of complaint herein be and the same hereby are denied; and it is further adjudged, ordered and decreed that the prayers of the cross bill of complaint in the above entitled cause be and the same hereby are granted; that the assignment of the certificate of membership, No. 50,963, in the Safety Fund Department of the Hartford Life and Annuity Insurance Company of Hartford, Connecticut, bearing date December 5th, 1881, and delivered to John Shea, which said assignment bears date December 21st, 1906, and is signed by John Shea, and pur-

ports to transfer, assign and set over unto Maria Waters of
327 Washington, D. C., all the right, title and interest in and to the said policy of insurance, subject to the terms and conditions thereof, of the said John Shea, is and the same hereby is declared to be, null and void and of no effect whatsoever.

It is further adjudged, ordered and decreed that Wilton J. Lambert and Irving Williamson, Collectors appointed in the matter of the estate of John Shea, deceased, Probate No. 15443 in the Supreme Court of the District of Columbia, who are made defendants in the above entitled cause, distribute the fund of nine thousand, eight hundred and twenty-two dollars and fifty cents (\$9822.50) in their hands, less their commissions and expenses, to be ascertained and allowed by the said Supreme Court of the District of Columbia in

the said probate cause, in the following manner, that is to say: To pay to Maria Waters the sum of one thousand forty-seven dollars (\$1047), being the money advanced by her in payment of the premiums due on the policy of insurance herein named from September 3rd, 1906, up to and including the instalment due June 4th, 1908, with interest on each of said instalments from the dates of the respective payments; to pay to Margaret Kopp, one of the defendants herein, the sum of thirty-seven dollars and fifty cents (\$37.50), advanced by her in part payment of the premium on the said policy of insurance due on September 3, 1906, with interest from said date; to pay to the defendant, Elizabeth Jewell, the sum of thirty-seven dollars and fifty cents (\$37.50), being money advanced by her in part payment of the premium of insurance
328 due on said policy of insurance on September 3rd, 1906, with interest from said date; together with the costs of this proceeding. The balance of said fund to be distributed as follows: One-sixth part thereof to be paid to the complainant, Maria Waters; one-sixth thereof to be paid to the defendant, Margaret Kopp; one-sixth thereof to be paid to the defendant, Elizabeth Jewell; one-sixth thereof to be paid to the defendant, Alice Smith; one-sixth thereof to be paid to the defendant, Annie Mulloy; one-sixth thereof to be paid to the administratrix of the estate of Edward Shea, deceased; provided, however, said collectors shall pay the sum of five hundred dollars (\$500) to Wilton J. Lambert and Rudolph H. Yeatman, solicitors herein as counsel fees, the same to be charged in equal proportions against the shares of Elizabeth Jewell, Margaret Kopp, Alice Smith, Annie Mulloy, and that awarded to the administratrix of the estate of Edward Shea.

By the court:

WRIGHT, *Justice*.

The complainant in the original bill, Maria Waters, notes an appeal in open court to the court of Appeals of the District of Columbia, from this decree, and said Maria Waters as defendant to the cross-bill herein is allowed to sever from her co-defendants in said cross-bill, and as such defendant to the cross-bill notes an appeal from said decree to the Court of Appeals of the District of Columbia, and the amount of the bond to be given by her on said appeals, to act as a supersedeas is fixed in the sum of one thousand dollars.

WRIGHT.

329 *Appeal by John E. Waters, Infant, by Guardian ad Litem.*

Filed Jun- 23, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

The Clerk will please enter an appeal by John Edward Waters formerly John Edward Shea an infant by John Mitchell, Jr., his

Guardian ad Litem from so much of the Decree passed on June 18th, 1909, in this Cause as directs payment of said infant's share of the fund to the administratrix of said infant's deceased father instead of to said infant, and the clerk will issue citation to Wilton J. Lambert and Irving Williamson as Collectors of the estate of John Shea deceased as appellees on said appeal.

JOHN RIDOUT,
Solicitor for said Guardian ad Litem.

330 In the Supreme Court of the District of Columbia.

No. 28147. In Equity.

MARIA WATERS
vs.
MARGARET KOPP et al.

The President of the United States to Wilton J. Lambert and Irving Williamson, collectors of estate of John Shea, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal noted in the Supreme Court of the District of Columbia, on the 23rd day of June, 1909, wherein John Mitchell, Jr., as guardian ad litem of John E. Waters, formerly John E. Shea, infant, is Appellant, and you are Appellee-, to show cause, if any there be, why the Decree rendered against the said Appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, this 23rd day of June, in the year of our Lord one thousand nine hundred and nine.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM, *Ass't Clerk*.

Service of the above Citation accepted this 30 day of June, 1909.

W. J. LAMBERT,
IRVING WILLIAMSON,
Appellees' Collectors.

[Endorsed:] No. 28147. Equity. Waters vs. Kopp. Citation.
Issued June 23rd, 1909.

331 *Order Allowing Severance on Appeal by John E. Waters, &c.*

Filed Jun- 23, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

The infant defendant John Edward Waters formerly John Edward Shea by his Guardian ad Litem having appealed from part of the Decree passed herein on June 18th 1909 the said infant is on Motion allowed to sever on said appeal bond his co-defendants to the original and cross Bills and the bond for costs on said appeal is fixed at one hundred dollars, this 23d day of June 1909.

WRIGHT.

Memoranda.

June 24, 1909.—Appeal bond of Maria Waters, approved and filed.

June 30, 1909.—Appeal bond of John Edward Waters formerly John E. Shea, infant, by John Mitchell, Jr., his guardian ad litem, approved and filed.

332 *Directions to Clerk for Preparation of Transcript of Record.*

Filed Jul- 9, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

John R. Young, Esq., Clerk:

Please include in the transcript of record for the Court of Appeals in the above entitled cause, the following:

1. Bill of Complaint and exhibit thereto.
2. Answer of Margaret Kopp and Annie Mulloy.
3. Answer of Elizabeth Jewell and Alice Smith.
4. Answer of Collectors.
5. Order appointing guardian ad litem for John Edward Shea and answer of said guardian.
6. Replication.
7. Cross-bill of defendants Margaret Kopp and Annie Mulloy.

8. Answers of Maria Waters, Elizabeth Jewell, Alice Smith, Collectors and guardian ad litem thereto.

9. Testimony for complainant in chief.

10. Testimony in behalf of defendants Margaret Kopp and Annie Mulloy in defense and in support of cross-bill, and deposition from Hartford, Conn.

11. Testimony in behalf of Maria Waters in rebuttal and in defense of cross-bill.

333 12. Answer of John Shea in Equity Cause No. 23513.

13. Final decree with order annexed thereto allowing severance and fixing appeal bond.

14. Order allowing severance and appeal by John Edward Shea and fixing appeal bond, also citation on his appeal.

15. Memorandum of filing an approval of appeal bonds by Maria Waters and John Edward Shea.

16. Designation of record.

IRVING WILLIAMSON,

Sol'r for Comp't.

WILTON J. LAMBERT,

Sol'r for Def'ts Kopp & Mulloy and Compl'ts Cross-bill.

334 *Stipulation as to Omission of Certain Exhibits.*

Filed Aug. 13, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28147.

MARIA WATERS

vs.

MARGARET KOPP et al.

In the above entitled cause it is stipulated by and between counsel that exhibits filed by complainant with the testimony in her behalf numbered two to six, both inclusive, being photographic reproductions of the insurance policy and assignment thereof, referred to in the pleadings, need not be included in the transcript of the record on the appeal by the complainant to the Court of Appeals, but that said exhibits shall be produced before the Court of Appeals at the hearing with the same effect as though included in the transcript.

August 12th, 1909.

IRVING WILLIAMSON,

Sol'r for Complainant.

WILTON J. LAMBERT,

Sol'rs for Defendants.

335 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 334 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in Equity Cause No. 28147, wherein Maria Waters is Complainant and Margaret Kopp, et al. are Defendants; Margaret Kopp and Annie Mulloy are Cross-complainants and Maria Waters, et al. are Cross-defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 13th day of August, 1909.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
FRED. C. O'CONNELL,
Ass't Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2054. Maria Waters, appellant, vs. Margaret Kopp et al. Court of Appeals, District of Columbia. Filed Aug. 13, 1909. Henry W. Hodges, clerk; and No. 2055. John Mitchell, Jr., as guardian, &c., appellant, vs. Wilton J. Lambert et al., collectors of estate of John Shea. Court of Appeals, District of Columbia. Filed Aug. 16, 1909. Henry W. Hodges, clerk.

COURT OF APPEALS,
DISTRICT OF COLUMBIA
FILED

JAN 5 - 1910

Henry W. Hodges;
to him.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1909.

No. 2054.

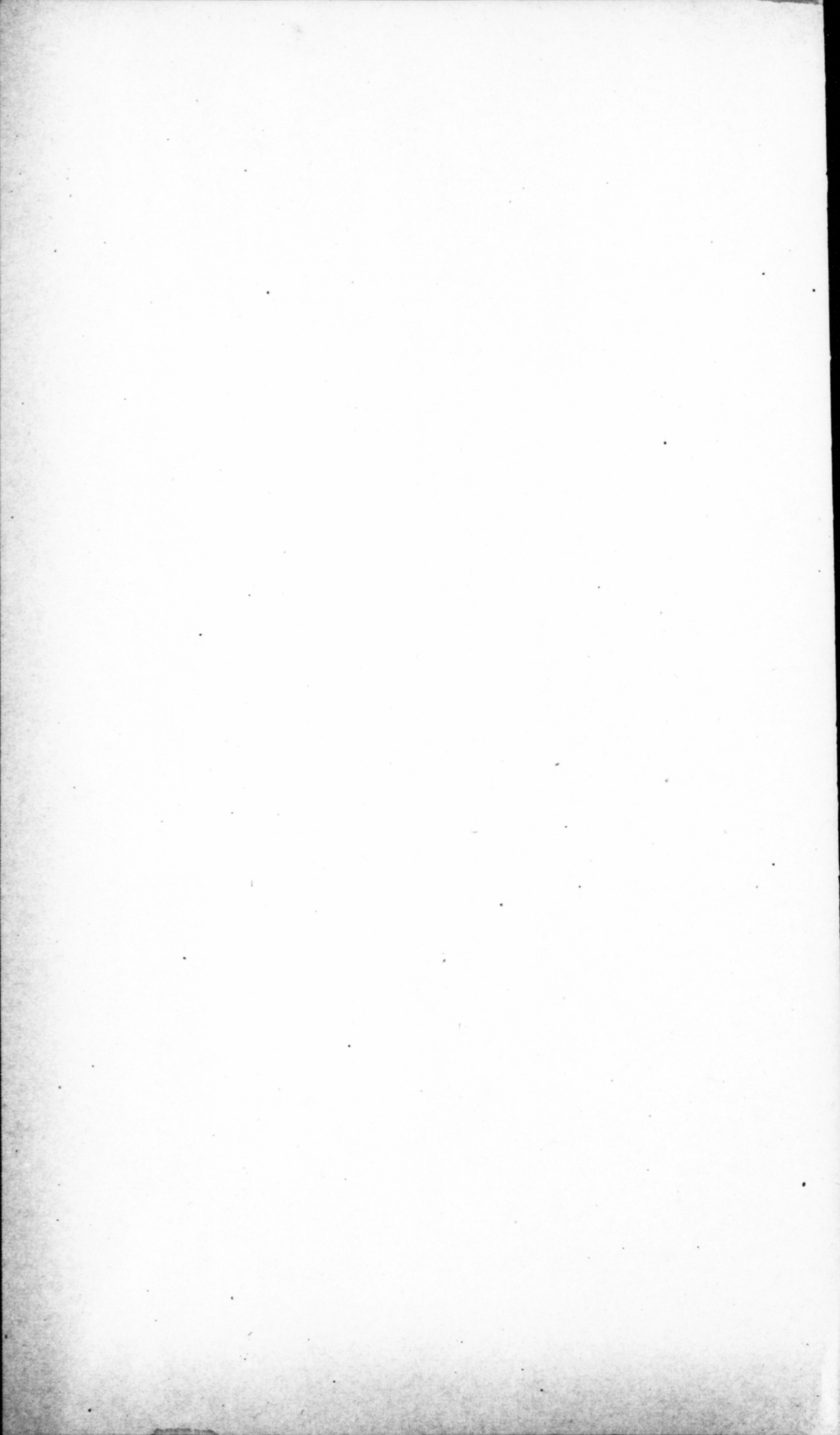
MARIA WATERS, APPELLANT,

vs.

MARGARET KOPP, ELIZABETH JEWELL, ALICE
SMITH, ANNIE MULLOY, ET. AL.

BRIEF ON BEHALF OF APPELLEES.

WILTON J. LAMBERT,
RUDOLPH H. YEATMAN,
Attorneys for Appellees.



In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1909.

No. 2054.

MARIA WATERS, APPELLANT,

vs.

MARGARET KOPP, ELIZABETH JEWELL, ALICE
SMITH, ANNIE MULLOY, ET. AL.

BRIEF ON BEHALF OF APPELLEES.

Statement of Case.

This is an appeal by Maria Waters from a decree of the court below distributing the proceeds of a certificate of insurance for \$10,000, issued on the life of John Shea, deceased.

During the lifetime of Shea this policy of insurance was issued by the Hartford Life and Annuity Insurance Company, dated December 5, 1881, and numbered 50,963, in and by which the company contracted to pay, upon his death, a maximum indemnity of \$10,000, "to his wife, Maria Shea, if living, otherwise to his legal representatives" upon the presentation of the certificate (Rec., p. 5).

Maria Shea, the first beneficiary named in the certificate, died May 7, 1900, John Shea surviving her (Rec., p. 68). At the time of her death she was also survived by her

six children, Maria Waters, Margaret Kopp, Annie Mulloy, Elizabeth Jewell, and Alice Smith, and Edward Shea, father of the appellee, John Edward Shea Waters. On February 11, 1906, Edward Shea died (Rec., p. 59), leaving as his sole heir at law his son, John Edward Shea Waters, and as his next of kin his said son, and his widow, Helen Shea. Thereafter his widow was appointed administratrix of his estate.

On July 12, 1908, John Shea died (Rec., p. 48), and was survived by his five children, Maria Waters, Margaret Kopp, Elizabeth Jewell, Alice Smith, and Annie Mulloy, and by his grandson, John Edward Shea Waters.

Upon the death of John Shea, the appellant, Maria Waters, presented to the insurance company an alleged assignment, dated December 21, 1906, purporting to have been executed by John Shea, and to transfer and assign to Maria Waters all his right, title, and interest in the aforementioned insurance policy (Rec., p. 46).

The company having been notified that some of the appellees claimed that this assignment was a nullity, withheld payment of the certificate to Maria Waters, and thereafter paid the proceeds thereof to the appellees, Lambert and Williamson, who were appointed collectors of the estate of John Shea by the Probate Court.

Thereafter the appellant filed her bill in equity herein, praying that a decree be passed establishing the assignment of the certificate to her and declaring that she was entitled to the proceeds thereof (Rec., p. 2).

To this bill the appellees, Margaret Kopp and Annie Mulloy, filed their answer and cross-bill, in and by which they averred that the alleged assignment of the certificate of insurance of John Shea to Maria Waters was a nullity, for the reasons (1) that the certificate of insurance was secured and paid for by Maria Shea during her lifetime, and subsequently by the children of John and Maria Shea after the latter's death; (2) that Maria Shea

procured this policy with the intention that it enure to her benefit should she outlive her husband, and to the benefit of the children equally in case of her predecease, and used the expression contained in the policy to effect that intention; (3) that the parties in interest hereto, and John Shea and Edward Shea, joined in an agreement whereby all, excepting John Shea, contributed to a fund of \$1,800, which was placed in the hands of Wilton J. Lambert and Irving Williamson, as trustees, for the purpose of holding and using the same in payment of the quarterly premiums and assessments on the policy, which was done (the agreement providing that the parties would share equally the proceeds of the policy); (4) that John Shea was mentally incapable of executing the alleged assignment, and (5) that this alleged assignment was obtained by undue influence practiced upon John Shea by the appellant or her husband or some other person unknown. The cross-bill prayed that the court decree the alleged assignment to be null and void and of no effect, and that the court order the proceeds of the policy to be paid to the parties hereto excepting the collectors, Williamson and Lambert.

The appellees, Elizabeth Jewell and Alice Smith, filed a joint answer to the bill of complaint, in and by which they attempt to admit that the insurance policy referred to in the bill was assigned by John Shea to Maria Waters in the manner set forth in the bill, and that Maria Waters is entitled to the proceeds thereof (Rec., p. 13). Jurat to this answer is waived by Irving Williamson, solicitor for complainant, and those appellees do not appear by counsel.

The appellant, Maria Waters, and the appellees, Alice Smith and Elizabeth Jewell, filed their answers to the cross-bill, denying the substantial allegations thereof. The appellees, Elizabeth Jewell and Alice Smith, did not file their answers to the cross-bill through counsel.

The infant appellee, John Edward Shea Waters, who had been adopted by the appellant, Maria Waters, appeared through his guardian ad litem, John Mitchell, Jr.

Alice Smith, appearing as a witness on behalf of appellant, testified, on cross-examination, as follows (Rec., p. 114):

“Q. Did not you say to Mrs. Kopp that you would get just as much whether you fought this case or not?

A. If Mrs. Kopp should get any, of course I would get the same as she got.

Q. You told her that?

A. Yes.”

Elizabeth Jewell, appearing as a witness on behalf of the appellant, testified, on direct examination, that she had told Mr. Kopp she did not want to have any enmity with Mrs. Waters about this suit (Rec., p. 104). She also told him that she had sent to her sister, Annie Mulloy, and that Mrs. Mulloy was very foolish to enter this suit because if Mrs. Kopp won out, it would be perfectly natural that the others would receive the same benefit (Rec., p. 105).

It appears from the testimony that during the lifetime of Mrs. Shea, and when this policy was secured, she conducted a grocery store and saloon (Rec., p. 90), and supported her husband, John Shea, the latter not doing any work, and having no income save what he received from his wife (Rec., pp. 49, 68); that Mrs. Shea, because of her insurable interest in the life of her husband, procured the insurance policy herein mentioned on his life, and paid the premiums (Rec., pp. 49, 68) at the time she was possessed of considerable real property (Rec., p. 68), and while she put several of her houses in the name of her husband, it was done solely to enable him to go on bonds (Rec., pp. 68, 89). It further appears that Mrs. Shea during her lifetime said that if anything happened

to her she wanted the children to keep up the policy as they would reap the benefit from it, and that at her death the proceeds of the policy would go to the children (Rec., pp. 50-69). The witness, Franz Kopp, husband of the appellee, Margaret Kopp, testified (Rec., p. 91):

“A. In the presence of the whole family, Mrs. Shea said that in case of her death that she wanted this kept up by us boys, and she was referring to the husband of each one of the daughters.

Q. Wanted what kept up?

A. This insurance policy.

Q. Why did she want it kept up?

A. For the benefit of the children; her children. She said we will all benefit by it some day or another.

Q. Was Mrs. Waters present then?

A. The whole family at times, when she spoke of it often; used to dwell upon it.”

Prior to Mrs. Shea's death, the home of the family was at 325 Maryland avenue S. W. After her death the family continues to live there for a while, and then they separated, Mrs. Waters continuing to live there, however, and her father remaining with her until he died (Rec., p. 47). All of the witnesses produced by the appellees, Margaret Kopp and Annie Mulloy, testified that Mr. Shea during his lifetime was a hard drinker, and was always under the influence of intoxicants (Rec., pp. 48, 60, 70, 91), the witness Helen Shea testifying that he was seriously ill from drinking around Christmas time, 1906 (Rec., p. 60), which was at or near the time when the alleged assignment was executed.

The premiums on the insurance policy were payable in March, June, September and December, and during the lifetime of her mother, the appellee Margaret Kopp, usually paid them for the latter (Rec., p. 69). After the

death of Mrs. Shea the premiums were paid out of the rent accruing from the property that she died seized of, up until the creation of a fund of \$1,800 by the six children, each contributing \$300 for the payment of the premiums and assessments as they became due on the policy, as shown by the agreement entered into between the children, including Maria Waters and John Shea, and in and by which the children agreed to share the proceeds of the policy equally (Rec., p. 75). When this fund was created it was the understanding of the parties that the insurance policy would accrue to the benefit of the children (Rec., p. 75).

This fund was used for the purposes for which it was created, but was exhausted by the payment that fell due in June, 1906. When the next payment fell due, in September, 1906, the appellee, Margaret Kopp, was called on by Mr. Waters, the husband of Maria Waters, and who, the witness, Annie Mulloy, testified, was the "main one in this case," meaning that he had full charge of the interests of his wife, for a contribution, which she made by check (Rec., p. 79). With respect to what happened at the time she gave this check, the appellee, Margaret Kopp, testified as follows (Rec., p. 79):

"Q. Now, state the circumstances under which the check was given—how it came about.

A. Well, Mr. Waters promised me that he was going to go to some lawyer and have the papers drawn up—after that money, the fund, had given out—that he was going to have some papers drawn up that we would benefit by it. Well, after that money gave out, Mr. Waters continued to call on me for more, and I told him I was not going to put in any more money unless it was drawn up by a lawyer, that we would benefit by it after continuing paying in it, and he assured me that it would be done. He told me that after this payment was made it would be done; I need not fear, but I did fear him."

Mrs. Kopp further testified that she told Mr. Waters on this occasion in September that she was always willing to pay her share of the premiums if he would have proper papers drawn up to protect her so that there would be no trouble after her father's death (Rec., p. 80). Mrs. Kopp was willing to have the necessary papers prepared and so informed Mr. Waters, but the latter insisted that she leave it to him, that he would attend to it; she even consulted counsel in regard to the preparation of the papers and requested Mr. Waters to let her have the policy for that purpose, but Mr. Waters "guarded that policy as if it were his own" and did not let her have it (Rec., p. 81). Mr. Waters did not keep his promise in regard to having these papers prepared, and without the knowledge or assent of Mrs. Kopp, secured the assignment from John Shea in the following December (Rec., p. 81). While Mr. Waters testified that he called up Mrs. Kopp on December 3, 1906, and asked her to contribute to the premium that was due on the following fifth, Mrs. Kopp denied, on cross-examination, that she had any conversation with Mr. Waters after the payment of her share in September, and denied that she had the conversation on December 3d in which she is alleged to have refused to pay another cent on account of the policy.

Testimony was offered by the appellant tending to show that while John Shea drank beer he was never seen by the witnesses in a drunken condition.

ARGUMENT.

While a great deal of testimony has been taken by the parties hereto, with reference to the procurement of the policy of insurance on the life of John Shea, and counsel for appellant has ingeniously endeavored in his brief to prove to this court that this policy was really paid for

by John Shea, although the testimony on behalf of the appellees is overwhelmingly to the contrary, we think that it must be conceded on this hearing that Mrs. Shea did procure and pay for this policy of insurance, during her lifetime, and that the children and heirs, after her death, continued to pay therefor up until the creation of a fund of \$1,800 for that purpose, as the appellant, herself, and John Shea conceded such to be the case, under their hands and seals, in the agreement creating the \$1,800 fund. We quote from this agreement (Rec., p. 77):

“Whereas, there exists a life insurance policy for the sum of ten thousand dollars (\$10,000) upon the life of John Shea of the City of Washington, District of Columbia, father of the undersigned, which said policy has been issued by the Hartford Life Insurance Company of Hartford, Connecticut, upon the life of said John Shea, the same having been taken out during the lifetime of Maria Shea, who was formerly the wife of said John Shea and the mother of the undersigned, which said policy was kept alive by the payments of premiums thereon by the said Maria Shea during her lifetime, but inasmuch as the proceeds from same, in case of the death of said John Shea, insured to the benefit of the children of said insured, the said premiums have, since the death of said Maria Shea, been paid and the policy in this way kept alive and in full force and effect by the undersigned as heirs and children of the insured, each contributing his or her pro rata or proportionate share towards the payment of said premium out of the rents which have accrued from the property coming to them from Maria Shea, deceased.”

When partition proceedings were had of the real estate left by Mrs. Shea the children each contributed \$300 from the shares coming to them, for the purpose of con-

tinuing the payment of the premiums, so that the insurance policy would enure to their benefit, and entered into an agreement of date December, 1903, a section of which has been quoted from, and in which the children and John Shea recognize that the policy of insurance was for their benefit equally (Rec., p. 77).

When this fund was exhausted in June, 1906, and a payment became due in the following September, the policy was in the possession of Mr. Waters, husband of appellant, and acting as her agent in this transaction; Mrs. Kopp made her payment but requested that proper papers be prepared so that she might be sure of her protection, as she was afraid she would be tricked by Waters, this fear being born of prior experience with him, and which was proven to be justified by his subsequent actions. He put her off by saying that he would have the papers prepared and, according to her emphatic statements, did not communicate with her further on the subject, but secured the assignment of the policy in the following December without her knowledge; nor did he make any efforts to procure the papers requested, although he had informed her that it would not be necessary for her to have this done. Waters testifies that on December 3d he made demand upon Mrs. Kopp for her proportionate share of the premium due that month, but she denies this emphatically; and nowhere in the testimony does it appear that Waters informed her, as he should have done, acting for the appellant, that he paid the premium for that quarter, or for any other quarter thereafter, nor did he make demand upon her to contribute to the expense of this policy held by them like tenants in common, which it was his duty to do. Instead thereof he clandestinely connived to secure the assignment mentioned herein, without the knowledge of those who stood in the relation of cotenants of his wife of this fund, and remained silent in regard thereto,

hoping to secure the exclusive benefit of this policy to his wife, notwithstanding the large sums of money expended thereon by Mrs. Shea for her children and by the children themselves as shown herein. And this, notwithstanding the fact that the appellant and her husband are in good circumstances financially, whereas the appellee, Annie Mulloy, who has seven children, is very poor, her husband depending upon his day's wages (Rec., p. 95.)

The Children of John Shea Became Jointly Entitled to the Proceeds of the Certificate Like Tenants in Common.

If the policy of insurance had not in effect been made payable to the children of John and Maria Shea, as it will be our contention hereafter, yet the execution of the agreement of December, 1903, created a community of interest of the parties to that agreement in the fund derivable from the policy, and it would follow that the rules of law regulating the conduct of cotenants of real estate would by analogy be applicable to this case. The very relation itself created a duty on the part of all the parties concerned to protect this common fund and not by various promises and acts seek to cause each other to lose their benefit in that fund after such large sums had been contributed by each for that purpose.

It is well settled that where one of two or more cotenants purchases an outstanding lien or title to the property held jointly by them, it enures to the benefit of all. Of course such purchasing cotenant would be entitled to reimbursement for the money so expended by him, and that is why it was provided in this decree that Maria Waters, Margaret Kopp, and Elizabeth Jewell should receive from this fund an amount equal to that paid by them in excess of that paid by the other parties

in interest, before the proceeds should be divided amongst the parties entitled equally. The rule and its reason is well stated in the case of *Turner vs. Sawyer*, 150 U. S., 578, in the following language:

“It is well settled that cotenants stand in a certain relation to each other of mutual trust and confidence; that neither will be permitted to act in hostility to the other in reference to the joint estate; and that a distinct title acquired by one will enure to the benefit of all. A relaxation of this rule has been sometimes admitted in certain cases of tenants in common who claim under different conveyances and through different grantors. However, that may be such cases have no application to the one under consideration, wherein a tenant in common proceeds surreptitiously in disregard of the rights of his cotenants to acquire a title to which he must have known, if he had made a careful examination of the facts, he had no shadow of right. We think the general rule as stated in *Bissell v. Foss*, 114 U. S., 252, 259, should apply; ‘that such a purchase (of an outstanding title or incumbrance upon the joint estate for the benefit of one tenant in common) enures to the benefit of all, because there is an obligation between them, arising from their joint claim and community of interest; that one of them shall not affect the claim to the prejudice of the others.’ *Rothwell v. Dewees*, 67 U. S., 2 Black, 613; *Van Horne vs. Fonda*, 5 Johns. Ch., 388; *Lloyd vs. Lynch*, 28 Pa., 419, 70 Amer. Dec., 137; *Downer vs. Smith*, 38 Vt., 464.”

In the light of the foregoing utterance of the Supreme Court it is worthy to note that no one interested under this agreement became aware of the existence of this alleged assignment until at or about the time of the death of John Shea; nor did Maria Waters or John O.

Waters, her agent, make any demand upon the appellees for contribution to any expenditure made by them for the protection of this common fund. John Waters testifies that in December, when the next payment was due, after the exhaustion of the fund and after the payment of the assessment in September by Mrs. Waters, Mrs. Kopp, and Mrs. Jewell, he telephoned to Mrs. Kopp and made demand for her share of the premium due that month, and that she refused to make such payment. The statement of counsel in his brief, at page 16, that Mrs. Kopp admitted that a request had been made over the telephone in December, 1906, for her contribution to the premium due that month is not supported by the record. On the contrary, she emphatically denies that she had any such conversation (Rec., p. 87).

It seems strange that counsel for the appellant should in his brief urge that the appellees be precluded from asserting their rights as cotenants, because they did not contribute to the subsequent payment of the premiums on this policy by the appellant when they had no knowledge whatsoever that the appellant had secured the alleged assignment of December 21, 1906, and in view of the offer on several occasions, as testified to by Mr. and Mrs. Kopp, to continue the payments, provided protection of their rights in the future would be had, which offers were subtly turned aside by Waters with the unfulfilled promises that he would have the papers drawn, and that it would not be necessary for Mrs. Kopp to have that done. The fact that Mrs. Kopp did not recall that part of the agreement of December, 1903, providing for a continuation of the payment of the premiums after the exhaustion of the fund does not avail the appellant, especially when the appellant, through her agent, Waters, recognized the justice of Mrs. Kopp's request and promised to do as she asked. It was impossible for Mrs. Kopp

to have the papers properly drawn without Waters' cooperation, as he retained possession of the policy, and was loathe to give it up.

The overweening desire of the appellant to secure the entire proceeds of this policy is not only manifested by the broken promises of her husband, who had been acting as her agent, by his statement to Mrs. Kopp that he could not keep up his part of the policy (Rec., p. 82), but by her own acts in endeavoring, after the death of John Shea, to secure the signature of Mrs. Mulloy to a paper acknowledging that John Shea had made a will leaving the insurance money to Mrs. Waters, and becoming angry upon Mrs. Mulloy's refusal to sign that paper (Rec., p. 52).

Counsel for appellant have laid stress on the fact that Mrs. Smith and Mrs. Jewell filed answers admitting appellant's rights to this fund. It is worthy of notice that Mrs. Kopp testified that Mrs. Smith had told her she had no money to carry on this proceeding, and that she expected to benefit by this proceeding, at Mrs. Kopp's expense (Rec., p. 82), and that Mrs. Jewell had likewise stated that she did not wish to prosecute this proceeding because she was afraid of arousing the enmity of the appellant if she did so, and would nevertheless benefit by this proceeding (Rec., pp. 104, 105). It was also emphatically denied by Mrs. Kopp that she ever advised Mrs. Jewell or Mrs. Smith to discontinue payments on account of this policy (Rec., p. 87). The attitude of Mrs. Smith and Mrs. Jewell in this suit is also rendered suspicious by their testimony with reference to the manner in which their answers were signed and filed in this case, which will be found at pages 107 and 114 of the record. This testimony bears out the charge of Mrs. Kopp that Mrs. Waters, Mrs. Jewell, and Mrs. Smith were acting in collusion.

John Shea Had no Interest in and to the Policy of Insurance, Which He Could Assign to Maria Waters.

(a) The consideration therefor was paid by Maria Shea, his wife, during her lifetime, and by his children, after the death of his wife, as hereinbefore pointed out. He was merely the subject of the insurance, having no substantial rights therein based upon a consideration, and therefore, as between the parties hereto, next of kin of John Shea and his wife, his act in attempting to assign this policy, without any consideration, to his one daughter, Maria Waters, without the consent of the other children, was without force and wholly ineffective.

(b) The parties hereto and the son, Edward Shea, were the beneficiaries named in the policy of insurance upon the death of Maria Shea, by the comprehensive term, "legal representatives." This term has a flexible meaning, and while it ordinarily refers to a man's executors, administrators, and assigns, yet it is to be construed with reference to the context of the insurance policy, the circumstances surrounding the procurement of the insurance, and the intention of the parties thereto.

Lockwood *vs.* Bishop, 51 How. Prac. (N. Y.), 221.

Murray *vs.* Strang, 28 Ill. App., 613.

Sauerbier *vs.* Union Cent. Life Ins. Co., 39 Ill. App., 620, 629.

Bogart *vs.* Thompson, 53 N. Y. Supp., 622.

It may mean "heirs," "next of kin," "children" or the like.

Loose *vs.* Insurance Co. 41 Mo., 538.

In the case of *Schultz vs. Citizens' Mut. Life Ins. Co.*, 59 Minn., 308, it appears that August C. Schultz took out a policy of insurance on his life payable "to and for the sole use of his legal representatives." Upon his death

his widow and the guardian of his children sued the insurance company to recover the amount due under the Policy. The court says (p. 313):

“Notwithstanding the loose, inaccurate and apparently contradictory use of terms in the application and policy, we are satisfied that the heirs (including the widow) of the deceased are the beneficiaries of the policy, and that the words ‘legal representatives’ as they are used, must be construed as meaning heirs or next of kin and not executors or administrators. It is always permissible to construe these words in that way, especially in wills and policies of life insurance, wherever it is apparent from the context or subject-matter that they were used in that sense. They will be construed in that way more readily in policies of life insurance than in almost any other kind of instrument, for the reason that such insurance is very commonly intended as a provision for the family of the insured.”

The case of *Griswold vs. Sawyer*, 125 N. Y., 411, is to the same effect and is very strong.

Murray vs. Strang, 28 Ill. App., 608.

Cases in which the phrase “legal representatives” has been so construed in instruments other than insurance policies:

Greenwood vs. Holbrook, 111 N. Y., 465, 9.

Brokaw vs. Hudson, 27 N. J. Eq., 135, 6.

Farnam vs. Farnam, 53 Conn., 261, 290.

We think that the context of this policy of insurance, and the evidence as to the intention of the parties in effecting this insurance, and the acts of the parties hereto themselves, conclusively show that the insurance was had for the benefit of Maria Shea should she outlive her

husband, and upon her prior demise for the benefit of her children.

As to the context of the policy, it will be noted that the policy in no way purports to be a contract with John Shea or his assigns; that it is not payable "to him, his executors, administrators or assigns;" that it is not payable to "*him*, his personal representatives."

The frequent expressions of Maria Shea to her children and others, as shown by the evidence herein, that the children should keep the policy up should she die, as it was for their benefit; the actions of John Shea himself after the death of his wife and before the making of the written agreement hereinafter referred to, in permitting the children to pay the premiums on the policy, and the participation of the complainant, Maria Waters, in that arrangement; the making of the written agreement in which John Shea and Maria Waters joined containing the positive statements that the insurance was effected for the benefit of the children; the payment of the large sums of money in pursuance of the contract, all to our minds conclusively establish the intention of the parties and the construction of the words "legal representatives" as used in this policy, by Maria Shea, John Shea, and the claimant, Maria Waters, to mean the children of John and Maria Shea.

In fine, we have the practical construction of the parties interested themselves to that effect. That construction if not controlling, is entitled to great weight in the consideration of the court.

Taylor et al. *vs.* Hill, 86 *Wisc.*, 99.

In the case of Haydel *vs.* Mut. Res. Fund Life Asso., 104 Fed., 718, 44 C. C. A., 169, the court, speaking of what effect a practical construction of a contract of insurance by the parties should be given, says:

"Aside from this view of the case, we may repeat what has heretofore been said, that the con-

temporaneous construction of the contract by the parties thereto is of the highest value in settling its true interpretation in those respects, where its construction is doubtful, and the evidence shows that the board of directors of the defendant had constantly exercised the power of changing the rate of assessment whenever they deemed it necessary to do so, and that the asserted right was not challenged by the deceased at any time during the 14 years that he remained a member."

In the foregoing case the company refused payment of the policies sued on, on the ground that the deceased refused or omitted to pay certain assessments made by it, known as mortuary calls, and the plaintiff contended that the assessments were unlawfully made; the right of the company to make these assessments under the contract was thereby placed in issue.

(c) John Shea and Maria Waters are bound by their admissions in the written instrument heretofore referred to, that the policy of insurance was for the benefit of the children of John and Maria Shea, and are estopped by that instrument from denying such construction of the words "legal representatives" as therein used in this proceeding.

Woodley *vs.* Holley, 111 N. C., 380.

(d) The children of John and Maria Shea being the beneficiaries as aforesaid, any attempted assignment by John Shea without their concurrence is invalid.

John Shea was not the real party to this contract and for that reason could not make a valid assignment alone.

In the case of *N. Amer. Life Ins. Co. vs. Wilson*, 111 Mass., 542, it appears that one John T. Wilson, upon certain representations of the agent of the insurance company, took out a policy of life insurance upon his life in favor of William F. Wilson and Andrew Wilson

and paid the premiums thereon himself; that subsequently the assured, claiming that the representations of the agent of the company, were false, filed this action to recover back the premiums paid. In denying his right to recover on the ground that he was not the proper party, the court says:

“Gray, J. The policy of insurance was made to William F. Wilson and Andrew Wilson and was payable to them. John T. Wilson whose life was thereby insured, was not a party to the contract. *Campbell vs. N. Eng. Ins. Co.*, 98 Mass., 381, 400. He had, therefore, no right to avoid the policy on the ground of fraud, and, even if the money paid by him for premiums was his own and not that of the assured, he can not recover it back in this action.”

See, also, *Ferdon et al. vs. Canfield*, 104, N. Y., 143.

The person by whom the policy is procured for his own benefit on the life of another is the party to the contract rather than the one on whose life the insurance is procured.

Conn. Life Ins. Co. vs. Luchs, 108 U. S., 498, an appeal from the courts of this District.

See also—

Brockway vs. Conn. Mut. Ins. Co., 29 Fed., 766.

Sawyer vs. Griswold, 125 N. Y., 411.

Lockwood vs. Bishop, 51 How. Prac. (N. Y.), 221.

Potter vs. Spilman, 117 Mass., 322.

1 May on Ins., sec. 112.

In the case of *Allis vs. Ware*, 28 Minn., 166, it appears that Lorenzo Allis had taken out a policy of insurance on his life payable to his wife, if living, or in case of her death, then to their children. Allis paid the premiums on the insurance. Speaking of the nature of the inter-

ests of the respective parties in the policy, the court says (p. 169):

“This case, as respects the question above propounded, is therefore ruled by the Ricker case, the doctrine of which is that a policy of the kind mentioned in this appeal, belongs, the moment it is issued, to the beneficiaries named therein; that the life insured has no legal or equitable interest in it; that if it has been delivered to and is held by him, he holds it as a naked deposit and that therefore he can not assign or transfer it for any purpose in pledge or otherwise.”

Sauerbier *vs.* Un. Cent. Life Ins. Co., 39 Ill. App., 620, 29.

2 May on Ins., sec. 390.

The cases cited by appellant as sustaining the right of John Shea to assign this policy are inapplicable to the case at bar.

In the case of New York Mutual Life Insur. Co. *vs.* Armstrong, 117 U. S., 597, it appears that one Hunter representing to the Insurance Company that he was a special partner of one Armstrong and had placed \$5,000 in the partnership and was apprehensive that he might be charged as a general partner, secured the issuance of an endowment policy of insurance on the life of Armstrong for \$10,000, payable to Armstrong *or his assigns* at the expiration of twenty years, but upon his prior decease to Armstrong's legal representatives, at the same time an assignment of the policy to Hunter being executed by Armstrong. Armstrong was murdered by Hunter, who was subsequently convicted of the offense and executed. Armstrong's wife as administratrix instituted proceedings to recover the \$10,000 from the Insurance Company, claiming that the assignment to Hunter only operated in the event Armstrong lived more than twenty years, and that the assignment

did not carry with it any right to the proceeds of the policy in case of Armstrong's prior decease. It is in view of these facts that the court states "the term 'legal representatives' *is not necessarily* restricted to the personal representatives of one deceased," and that "*it may in this case* include assigns as well as executors and administrators," and the court adds:

"The assignee here, Hunter, represented that he was the special partner of Armstrong and had placed \$5,000 in the partnership and was apprehensive that he might be charged as a general partner. If he was a special partner the contract was not a wager policy. And *as it was not a contract for the benefit of the wife of the assured*, it does not follow then those cases where for the protection of the beneficiary the power of the assured to divert the costs of payment is restricted." (The italics are ours.)

In the case of New York Insur. Co. *vs.* Flack, 3 Md., 341, the company was sued by the assignees. The policy was payable to the assured's representatives and assigned by the assured to one Nesbitt, in trust for the use of Mary E. Nesbitt. The policy contained the following statement: "And the said company do hereby promise and agree to and with the said assured, his executors, administrators and assigns." The court says:

"Although it be true that there is a provision in the policy binding the company to pay the legal representatives of the insured, yet this objection must be taken in connection with other portions of the same instrument, otherwise the true meaning of the whole would not be ascertained. The contract is with the 'assured, his executors, administrators and assigns'" (p. 352).

It is apparent in the last two cases that the fact that the policies were substantially made payable to the

assured *or his assigns* governed the courts in their decisions. The policy in this case can be searched in vain for any promise on the part of the Hartford Life and Annuity Insurance Company to pay proceeds of this policy to the assigns of John Shea.

In conclusion, we respectfully submit that should the court not agree with any of the conclusions hertofore urged, that nevertheless this case should be referred to the auditor to ascertain the money expended in premiums and the like in keeping up this insurance policy by the respective parties, crediting the premiums paid by the mother equally among the children, her next of kin, and thereafter direct a distribution of the proceeds of the policy in the proportions evidenced by the amounts respectively expended.

Brashears vs. Insurance Co., 1 App. D. C., 420.

In the last mentioned case it appears that at the instance of Catherine Brashears, a policy of insurance was issued on the life of her father, James Kennelly, and that Catherine was named as beneficiary; that the latter paid the dues on the policy for some years, but owing to domestic difficulties left home, leaving behind her the policy and the premium book, which she claimed, however, was surreptitiously taken possession of and withheld from her by her two sisters; that the two sisters thereupon continued to pay the dues on the policy up to the time of the death of the father. This gave rise to the contention as to who were entitled to the proceeds of the policy, and this court disposed of that case in the following language:

“Upon careful examination of the very conflicting evidence, the best and most equitable disposition of the case that we can make is to apportion the fund, after paying therefrom the taxable

costs of this suit, the one part to Catherine Bra-shears, in proportion to the premiums paid by her, and the other part to the other two sisters, in proportion to the premiums paid by them. That is to say, that the remainder of the fund, after payment of costs, shall be divided in proportions according to the amount of premiums paid by the two contending parties. And to that end we shall reverse the decree appealed from, and remand the cause, that a decree may be entered in accordance with this opinion."

Respectfully submitted.

WILTON J. LAMBERT,
RUDOLPH H. YEATMAN,
Attorneys for Appellees.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

SEP 29 1909

IN THE *Henry W. Hodges*
vs.

Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2055.

JOHN MITCHELL, JR., AS GUARDIAN AD LITEM OF JOHN
E. WATERS, FORMERLY JOHN E. SHEA, INFANT, APPEL-
LANT,

vs.

WILTON J. LAMBERT AND IRVING WILLIAMSON,
COLLECTORS OF ESTATE OF JOHN SHEA.

BRIEF FOR APPELLANT.

JOHN RIDOUT,
Attorney for Appellant.

IN THE
Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2055.

JOHN MITCHELL, JR., AS GUARDIAN AD LITEM OF JOHN
E. WATERS, FORMERLY JOHN E. SHEA, INFANT, APPEL-
LANT,

vs.

WILTON J. LAMBERT AND IRVING WILLIAMSON,
COLLECTORS OF ESTATE OF JOHN SHEA.

BRIEF FOR APPELLANT.

Statement of the Case.

The proceeding below was a bill in equity filed by Maria Waters, one of the daughters and next of kin of John Shea, deceased, against the collectors of his estate and the other next of kin.

The object of the bill is to assert her right to the whole proceeds of a certain insurance policy on the life of said John Shea by virtue of an assignment set out in the Record at page 43.

The defendants answered, and certain of the next of kin disputed the validity of the assignment.

The infant, who for convenience will hereafter be called the appellant, was represented by the guardian *ad litem*, John Mitchell, Jr., through whom he filed the usual answer.

Certain of the defendants below filed a cross-bill, to which the appellant is a defendant and which he answered in the same manner.

The pleadings and the proofs (Rec., p. 59) show that Edward Shea, one of the children of John Shea, died February 11, 1906, *before his father; who died July 12, 1908.*

This is conceded on all hands.

After hearing, the court passed the decree found on page 156. The decree vacates the assignment and directs distribution as therein set forth. Among other things, it directs that the share of the appellant shall be paid to *the administratrix of Edward Shea, deceased, who, as before stated, had died before his father, John Shea.*

From so much of the decree as thus directs payment of appellant's share to said administratrix instead of to appellant, this appeal, after due allowance of severance, was taken.

Assignment of Error.

The court below erred in adjudging that the share of the appellant should be paid to the administratrix of his deceased father's estate instead of to the appellant.

Argument.

The pleadings and the testimony both show that Edward Shea, the father of the infant appellant, died before John Shea, the insured. The share of the infant therefore vested directly in him by succession from his grandfather and not through his previously deceased father's estate.

The facts being conceded on all hands, as they are, the legal result is inevitable, and the personal representative of Edward Shea could have no possible right to any part of the fund, but the appellant's share passed directly to him by succession as one of his grandfather's next of kin.

Indeed, it is believed that the appellees will not dispute either the foregoing statement of facts, nor the conclusions drawn therefrom.

It follows that the decree below in the particular appealed from was erroneous, and that in that respect it should be reversed and modified here so as to provide for direct payment to the appellant, and, as so modified, the decree should be affirmed.

JOHN RIDOUT,
Attorney for Appellant.